BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1922 TO SEPTEMBER 30, 1924

HARWELL G. DAVIS ..... *Attorney General*

JUDGE A. A. EVANS ..... *Special Assistant Attorney General*
Appointed December 1, 1922

JUDGE JAMES J. MAYFIELD ..... *Special Assistant Attorney General*
January 1, 1922, Resigned January 20, 1923

HUGH WHITE ..... *Special Assistant Attorney General*
November 1, 1922, Through February 13, 1923

February 14, 1923, Appointed As Special Assistant Attorney General for the Alabama Public Service Commission

MARION RUSHTON ..... *Special Assistant Attorney General*
November 1, 1922, Resigned January 3, 1923

W. H. MITCHELL ..... *Special Assistant Attorney General*
February 1, 1923, Resigned April 30, 1925

O. B. CORNELIUS ..... *Special Assistant Attorney General*
May 1, 1923, Resigned August 31, 1924

J. F. JOHNSON, JR. ..... *Special Assistant Attorney General*
August 15, 1924

MRS. BERNICE SUMMERS OSGOODE ..... *Special Assistant Attorney General*
October 7, 1920, Resigned September 15, 1922

MRS. EDWINA FALKNER ..... *Special Assistant Attorney General*
September 15, 1922

LAMAR FIELD ..... *Special Assistant Attorney General*
October 1, 1919

MINNIE LEWIS ANDERSON ..... *Stenographer*

ELLA FRANCES BEALE ..... *Stenographer*

FLORENCE BYRNE WRIGHT ..... *Stenographer*

ATTORNEYS GENERAL OF ALABAMA

1819-1924

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Phelan	1836
Lincoln Clarke	1838
Matthew W. Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmet S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921

Note. For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

LIST OF CIRCUIT JUDGES AND SOLICITORS

1st Circuit—Choctaw, Washington and Clarke counties. Judge Ben D. Turner, Chatom; Solicitor Frank E. Poole, Grove Hill.

2nd Circuit—Butler, Crenshaw and Lowndes counties. Judge A. E. Gamble, Greenville; Solicitor Calvin Poole, Greenville.

3rd Circuit—Barbour, Bullock, Dale and Russell counties. Judge J. S. Williams, Clayton; Solicitor T. M. Patterson, Clayton.

4th Circuit—Bibb, Dallas, Hale, Perry and Wilcox counties. Judge S. F. Hobbs, Selma; Solicitor Jos. H. James, Greensboro.

5th Circuit—Chambers, Macon, Randolph, Tallapoosa and Lee counties. Judges S. L. Brewer, Opelika and N. D. Denson, Opelika; Solicitor C. H. Vann, Roanoke.

6th Circuit—Tuscaloosa county. Judge Henry B. Foster (commissioned on Court of Appeals, April 22, 1923); Judge Fleetwood Rice (succeeded Judge Foster); Solicitor Edgar L. Clarkson.

7th Circuit—Calhoun, Cleburne and Talladega counties. Judge A. P. Agee, and was succeeded by Judge S. W. Tate, December 17, 1923; Solicitor J. B. Sanford, Talladega, Ala.

8th Circuit—Cullman, Lawrence, Limestone, Madison and Morgan counties. Judge O. Kyle, Decatur, and Judge Jas. E. Horton, Athens; Solicitor D. C. Almon, Albany.

9th Circuit—Cherokee, DeKalb, Marshall and Jackson counties. Judge W. W. Haralson, Fort Payne; Solicitor A. E. Hawkins, Ft. Payne.

10th Circuit—Jefferson county. Judges C. B. Smith, W. E. Fort, H. P. Heflin, Romaine Boyd, Joe C. Hail, Richard V. Evans, Roger Snyder, J. C. B. Gwin, Dan A. Greene, deceased, and succeeded by John Denson, June 19, 1923; Solicitor James G. Davis, Birmingham.

11th Circuit—Colbert, Franklin and Lauderdale counties. Judge Chas. P. Almon, Florence; Solicitor Henry D. Jones, Russellville.

12th Circuit—Coffee, Covington and Pike counties. Judge A. B. Foster and succeeded, upon resignation, by Judge W. L. Parks, Troy, February 16, 1923; Solicitor R. H. Jones, Andalusia.

13th Circuit—Mobile County, Judges Saffold Berney, Joel W. Goldsby and Claude A. Grayson, Mobile; Solicitor Bart B. Chamberlain, Mobile.

14th Circuit—Walker, Winston, Fayette, Lamar and Marion counties. Judges R. L. Blanton and Ernest Lacy, Jasper; Solicitor B. G. Wilson, Jasper.

15th Circuit—Montgomery county. Judges Leon McCord and Walter B. Jones, Montgomery; Solicitor William T. Seibels, Montgomery.

16th Circuit—Blount, Etowah and St. Clair counties. Judges O. A. Steele, Oneonta, and Woodson J. Martin, Gadsden; Solicitor M. C. Sivley, Gadsden.

17th Circuit—Marengo, Greene, Pickens and Sumter counties. Judge John McKinley, Eutaw; Solicitor B. G. Wilson, Demopolis.

18th Circuit—Clay, Shelby and Coosa counties. Judge W. M. Lackey, deceased, and succeeded by Judge E. S. Lyman, Columbiana; Solicitor W. W. Wallace, resigned, succeeded by John J. Haynes, August 5, 1924.

19th Circuit—Autauga, Chilton, and Elmore counties. Judge Geo. F. Smoot, Wetumpka; Solicitor John W. Bateman, Wetumpka.

20th Circuit—Geneva, Henry and Houston counties. Judge H. A. Pearce, Dothan; Solicitor J. N. Mullins, Dothan.

21st Circuit—Baldwin, Conecuh, Escambia and Monroe counties. Judge John D. Leigh, Brewton; Solicitor Leonard S. Biggs, Monroeville.

LETTER OF TRANSMITTAL

April 17, 1926.

Hon. W. W. Brandon,
Governor of Alabama,
Capitol.
Dear Sir:

Herewith is transmitted as required by law, the Biennial Report of the Attorney General of Alabama beginning October 1, 1922, and ending September 30, 1924, both dates inclusive. The delay in printing this report has been occasioned by failure of a few trial solicitors to forward to the Attorney General reports which the law requires to be herein included.

During this biennial period seven hundred ninety-four (794) official opinions were issued by this office. Only two hundred and sixty (260) of the opinions have been included in this report because to have included all of them would have necessitated publishing another volume.

This office handled during this biennial period eight hundred and sixty-eigth (868) appeals in criminal cases, five hundred and five (505) of which were affirmed, one hundred fifty-nine (159) of which were dismissed and two hundred and four (204) of which were reversed. One hundred eighty-three (183) more appeals were handled during this biennial period than during the biennial period immediately preceding it and one hundred fifty-seven (157) more affirmances and dismissals were secured. These statistics do not include the civil business handled by this office.

The reports of trial solicitors required by Section 5502 of the Code of 1923 show that during this biennial period thirteen thousand, one hundred thirty-nine (13,139) criminal cases were disposed of in the Circuit Courts. Seven thousand, two hundred forty-two (7,242) resulted in convictions, which

was a little over fifty-five per cent (55%). These reports show that virtually one thousand (1,000) less cases were tried during this biennial period than the immediate preceding biennial period. Although the reports of solicitors appear voluminous, they fail to furnish complete criminal statistics. Such reports do not cover disposition of many cases tried in inferior courts and fail to indicate whether a trial was of a case shown on a previous report which had been appealed and reversed for new trial. These reports contain many other deficiencies. In my opinion, the value of accurate criminal statistics would justify securing the assistance of some expert on criminal statistics to assist in preparing adequate forms which would secure more complete information as to such matters. This will enable the Legislature to make such requirements as to the reports as would give full facts.

By virtue of the provision of the statute authorizing the Attorney General to require solicitors to prosecute in other judicial circuits than their own, I have, during this biennial period transferred some of the solicitors to do special work in other circuits. The Hon. Bart B. Chamberlain of Mobile has been detailed in more instances than any other solicitor. Although his own circuit requires more work of the solicitor than the average judicial circuit and demands virtually his entire time, yet he has given much time and co-operation to this office in the handling of much important and difficult matters. He has been in demand because of his recognized ability. Among others rendering good service in this manner were the following: Hon. J. Norton Mullins, Dothan; Hon. John P. McCoy, Birmingham; Hon. A. E. Hawkins, Fort Payne; Hon. John J. Haynes, Columbiana; Hon. Edgar L. Clarkson, Tuscaloosa; Hon. Calvin Poole, Greenville, and Hon. Jos. M. James of Greensboro.

By virtue of the Attorney General's duties relative to supervision of proceedings and law enforcement generally, I submit the following suggested changes which I deem in the

interest of better law enforcement. There should be one court of last resort. During the period of time under consideration, one hundred forty-one (141) criminal cases decided by the Court of Appeals were certioraried to the Supreme Court and required to be reviewed by that court. This meant an extra delay in the final disposition of each of these cases. Not only would this delay be eliminated by one appellate court, but the rendering of opinions only by a court of final jurisdiction would mean greater certainty of the law, which is essential to both the trial court and attorneys in the proper disposition of cases when first tried.

Under the statutes now regulating appeals in criminal cases, many appeals are taken because of the delay in the execution of the sentence of the trial court which can be secured by such action. Of the one hundred and fifty-nine (159) criminal cases heretofore mentioned as dismissed, there was no contention that the court had made any error in the trial of a case. It is safe to state that a majority of these appeals were taken for the purpose of delaying execution of the sentence of the court. Here are the possibilities of delay under present statutes by taking an appeal, to-wit:

John Doe is convicted of the sale of prohibited liquors, a misdemeanor, in the Circuit Court of Montgomery County, fined one hundred dollars ($100.00) and given six months hard labor. The State introduced only one witness who testified to the sale. The defendant did not take the witness stand and deny the sale, but introduced one witness who testified to his good character. All the testimony in the case could be transcribed by a competent stenographer within a few minutes and the whole transcript of the proceedings filed within a week with the court of last resort, but here is what happens. John Doe appeals, although no contention is made that any error has been committed in the trial court. The statute gives him ninety days to reduce the statements of the witnesses to writing and to present it to the trial judge. The

trial judge then has sixty days in which to review and sign the same. After the trial judge has signed this bill of exceptions, the clerk of the court has twenty days within which to prepare the record which is filed with the Court of Appeals. It happens that the expiration of this one hundred seventy (170) days is just after the call of the Division in which the Montgomery cases are submitted, which occurred in the month of May. The next call of this Division in which the Montgomery county cases are submitted occurs in the following December, or seven months thereafter. Thus, it will be seen that under the present statutes, it is possible in a misdemeanor case where no contention is made that the court has committed an error in the trial thereof, to secure a delay in the execution of the sentence of over one year. Such a possibility should not exist.

One of the greatest handicaps to the enforcement of law, in my opinion, is a lack of competent investigation immediately upon the commission of the crime. A lack of such investigation or the delay in making such investigation gives criminals an opportunity to destroy evidence as to physical conditions, to secure the absence of witnesses and to influence witnesses to modify their testimony. Prosecuting solicitors on whom rests the responsibility of trying those charged with the commission of crime and who are entirely familiar with what is competent evidence, should be given authority and required especially in important felonies, to make a thorough investigation immediately upon the commission of crime. To this end, he should be given authority to take testimony under oath and require persons to testify as to their knowledge of facts concerning such matters.

The Attorney General of Alabama is by virtue of his office a member of a number of important State boards and commissions. He is a member of the State Board of Compromise which has considered during this biennial period over one hundred and fifty (150) matters. He is a member of the

Board of Compromise of School Lands, the State Bond Commission, the State Purchasing Commission, the State Building Commission, the State Budget Commission and the State Board of Pardons.

The State Board of Pardons considers applications for permanent paroles and pardons in felony cases and all indeterminate sentences. Over one hundred (100) cases come to the consideration of this board every month. The duties of the Board of Pardons require such a large portion of one party's time that it was impossible for the Attorney General personally to attend to the duties of this work and properly supervise the legal work of the State required of his office. The Board of Pardons acts only in an advisory capacity and its recommendation has no binding effect upon the Governor. The Hon. A. A. Evans, Chief Assistant Attorney General, represents this office on this board and has been made chairman of the Board of Pardons by the other two members. In my opinion, the authority of the Board of Pardons should be increased to where its favorable recommendation is a prerequisite to the right to appeal to the Governor for clemency.

This report does not contain the activities of the Attorney General relative to matters relating to the Public Service Commission, as its matters will be contained in the report of that Commission. The Hon. Hugh White, Special Assistant Attorney General, and legal adviser to the Public Service Commission, has efficiently handled some of the most important litigation coming under the supervision of this office.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

OPINIONS
1922

October 10, 1922.

Hon. William F. Feagin,
State Warden General,
Capitol.

My dear Sir:

The Attorney General has referred to me your letter of the 3rd instant, in the first paragraph of which you make the following inquiry:

> "Please advise me whether or not in the case of a person regularly sentenced to the penitentiary, and escaped therefrom, if recaptured, tried for escaping and given an additional sentence, the cost bill in the escape sentence can be paid immediately or whether it will have to be held up until the convict has served the original sentence."

Section 6866 of the Code provides that any convict who escapes from the penitentiary before the expiration of the term for which he was sentenced, may on conviction be imprisoned for "an additional term" of not more than one year.

Section 6519 of the Code provides that when a convict is sentenced to imprisonment in the penitentiary on two or more convictions, the imprisonment on the second, and on each subsequent conviction, must commence at the expiration of the imprisonment on the preceding conviction.

Section 6575 of the Code provides that where a convict is sentenced in more than one case, the costs in the succeeding *cases shall not be paid* until he has served the preceding sentences.

Since under the provisions of Section 6866 of the Code the term of service required for escaping is an additional term, and since under Section 6519 of the Code such term does not commence until the expiration of the imprisonment on the preceding conviction, and under the provisions of Section 6575 of the Code, the costs in a case in which a convict is sentenced to the penitentiary, shall not be paid until he has served the preceding sentences, I am of the opinion that the cost bill in the escape case should be held up until the convict shall have served the original sentence.

Yours very truly,

LAMAR FIELD,
Assistant Attorney General.

October 31, 1922.

Hon. H. F. Lee,
State Auditor,
Capitol.

My dear Sir:

Query: Is the approval of the Governor required to authorize the drawing of a warrant for the payment of experts employed by the Alabama Public Service Commission?

Section 28 of the Transportation Act of 1920 and Section 3 of the Public Utility Act of 1920 are identical in wording and both require the approval of the Governor, both to the employment and payment of experts employed by the Commission. (Acts Special Session 1920, pages 39 and 92.)

That part of the Section relating to the payment of such experts which is applicable is as follows:

> "All money paid out under the provisions of this Section shall be paid out of the State Treasury on warrants drawn by the State Auditor on the State Treasurer, and approved by the Governor." (Acts Special Session 1920, page 40.)

What is known as the "expert fund" was formerly provided by Section 5641 of the Civil Code of 1907. This section of the Code was replaced by an Act approved November 23, 1907. (Acts Special Session 1907, page 43.) Both the provision of the Code Section and the Act superseding it provided that "The Commission may employ such experts as may be necessary to perform any services it may require of them." The Code Section limited the amount to be expended for such experts to twenty-five hundred dollars annually and the Act increased this amount to five thousand dollars per annum.

In my opinion it is impossible to escape the conclusion that Section 28 of the Transportation Act, and Section 3 of the Public Utilities Act were intended as a revision of the Act approved November 23, 1907. Both relate to the employment of experts by the Commission, both provide the manner of employment and payment of such experts, and both make an appropriation for this purpose.

Our Supreme Court has stated the rule relative to the repeal by implication in such cases as follows:

> "It is an old and well defined rule of statutory construction that a subsequent statute, revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate a repeal of the former."
>
> Lemay v. Walker, 62 Ala. 39, 40.
> Prowell v. State ex rel Hasty et al., 103, Ala. 87.

The said Act of 1920 being intended to wholly revise the Act approved November 23, 1907, the Act of 1907 is thereby repealed by implication, leaving as the sole law by virtue of which experts may be employed by the Public Service Commission, Section 3 of the Public Utility Act, and Section 28 of the Transportation Act. It follows that the approval of the Governor is necessary before you can authorize the drawing of a warrant for the payment of any expert employed by the Alabama Public Service Commission.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

December 19, 1922.

Hon. W. T. Steele,
Tax Adjuster Bibb County,
Centerville, Ala.

Dear Sir:

Your inquiry addressed to Mr. Davis has been by him referred to me for reply.

You ask whether or not the salary of the Tax Adjuster is a preferred claim and whether or not such claim should be registered.

In the case of Brown, Treasurer, v. Gay-Padgett Hdw. Co., 188 Ala. 423, 66 So. 161, the Court held:

"Legitimate county debts or obligations are of two classes: (1) those which are prescribed and imposed by law and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

"Section 153 of the Code makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations those involuntary obligations which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general and voluntary obligations of the county."

Acts of 1919, page 310, provides with reference to the salaries of county tax adjusters:

"That said salaries shall be paid monthly, one-half by the State on the warrant of the State Auditor, and one-half by the county, out of the general funds of the county, on the warrant of the Court of County Commissioners or other court of like jurisdiction, and the same shall be a preferred claim against the funds of said county."

Under the ruling of the Supreme Court in the case cited, this being an obligation absolutely fixed by law, is in our opinion a preferred claim.

Section 146, Code of 1907, provides in substance that every claim or such part thereof "as is allowed" by the court of county commissioners must be registered.

The tax adjusters' salary is not such a claim as can be examined, settled and allowed by the Court of County Commissioners or other governing body: it is an obligation fixed by law. It is, therefore, not such claim as should be registered.

Very truly yours,
EDWINA FALKNER,
Assistant Attorney General.

OPINIONS

1923

ISSN
0569-1078

January 11, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges your inquiry of January 8th, relating to the expense account of a member of the State Highway Commission incurred on a trip made to attend some general good roads meeting at Kansas City. The question is as to whether this expense item is chargeable against the State under the Highway Commission Act of October 31, 1921 (Acts, Special Session, 1921, p. 54).

Under date April 14, 1922, this Department advised Hon. W. S. Keller, State Highway Engineer, that under the provisions of the Act herein questioned, members of the State Highway Commission cannot legally draw from the State's treasury traveling expenses incurred when attending meetings of citizens of the State for the purpose of giving information relating to the plans of the State Highway Commission and the location of roads. Much that is said in that opinion is applicable here. Section 1 of the Act provides that "members of the Commission shall serve without compensation, but each shall receive and be allowed traveling and other expenses incurred by him in the discharge of his official duties." Section 2 of the Act sets forth the duties of the Commission and provides generally that it shall consider and determine all questions relating to the general policy of the State Highway Department and the conduct of its work and in the performance of its duties. No specified duty is laid on the Commission to make investigation outside the State of Alabama or to engage in any work of any kind outside the bounds of Alabama. There is nothing by implication in the Act on account of which it may be said to be an official duty of the Commission to attend good roads meetings anywhere. Section 4 of the Act provides "The State Highway Engineer and his assistants may be required to attend public meetings held in or out of the State in the interest of improving roads and bridges or the construction and maintenance of the same."

"The law is and should be extremely careful, watchful, and exacting of public officers where public funds are involved."

Mobile County v. Williams, 180 Ala. 639, 61 So. 963.

"Where a payment is claimed from public funds for an officer, such payment is collectible only when the payment is expressly authorized and expressly imposed by statute, and such payment cannot rest by implication."

Smith, Auditor vs. Bowers, T. C., 187 Ala. 606, 65 So. 819.

Under the rule of strict construction, it is not permissible to include in the meaning of the term "official duties" any act which by implication might be construed by some persons as being an official duty, but the meaning of the term must be limited to those duties which are imposed by the law and which the law requires such officer to perform.

People v. Hoffman, 116, III. 587, 5 N. E. 596.

Viewing together the provisions of the Act here under discussion and the legal requirement of strict construction, it is plain that the attendance on good roads meeting outside the State of Alabama is not an official duty of the State Highway Commission. As further evidence of the legislative intent in the matter, attention is called to the provision that the State Highway Engineer and his assistants may be required to attend meetings without the State. By implication, this latter provision would exclude such engagements from the line of official duty of any other person except the said engineer and his assistants.

In my opinion, the expense account referred to in your inquiry may not be allowed.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 10, 1923.

Hon. Chas. E. McCall,
Chief Examiner Public Accounts,
Capitol.

Dear Sir:

This acknowledges your recent inquiry in which you submit for the opinion of the Attorney General the question as to whether the Act of September 30, 1919, (Acts 1919, page 1113) is in violation of Section 94 of the Constitution which forbids the lending by any county, city or town, of its credit, or the granting of public money in aid of or to any individual, association or corporation. Your question relates particularly to an appropriation which has been made by the Court of County Revenue of Franklin County to the Russellville Concert Band.

The act in question provides authority for the support of "municipal bands and other musical organizations for public entertainment." In my opinion the Act in question does not violate Section 94 of the Constitution.

I expressly refrain from passing on the facts involved in determining the nature of the Russellville Concert Band. If the appropriation referred to comes within the terms of the Legislative Act, the County Treasurer will suffer no liability because of his disbursement of county funds on that account.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 11, 1923.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

I have before me your inquiry based on the facts submitted by Mr. N. R. Baker, County Superintendent of Education of Jefferson County. It appears that a large number of non-resident pupils are attending school in Jefferson County, some of them coming daily across the county line into the Jefferson County Public Schools. Your question is as to whether these

pupils in violation of the regulations and orders of the County Board of Education for Jefferson County can by virtue of Section 1755 of the 1907 Code enforce a right to attendance on the public schools of Jefferson County.

In an opinion from this department dated October 6, 1920, you were advised that Section 1756 of the 1907 Code is no longer operative because in direct conflict with the provisions of Section 100, Article 8 (Acts 1919, p. 597) of the school law enactment of 1919.

Answering your specific inquiry, it is my opinion that said Section 1755 of the 1907 Code is not susceptible of the construction sought to be placed upon it by the pupils in question, even if it were the existing law today. Said section must be read and construed in connection with other provisions of the school law and particularly in connection with Section 1756 immediately following and in connection with Section 1715, which placed the entire control of the public schools of any county in the County Board of Education of that county. Construing these several provisions together, in my opinion, it is perfectly clear that when said Section 1755 was in force and effect, it merely guaranteed to every child over seven years of age the right of admission into *some* public school reasonably related in location to his place of residence. In my judgment, the districting of school pupils was a discretionary matter with the boards and the authorities that controlled such matters. Never could it have been said that a pupil could arbitrarily pick out a school anywhere and claim it as his own and enforce a right of attendance there. However, I am of the further opinion that Section 1 of Article 5 and Section 11 of Article 5 and Section 10 of Article 8 of the said school law enactment of 1919 are in conflict with the construction sought to be placed upon said Section 1755 of the 1907 Code and if said Code section could have been entitled to the construction sought to be placed on it, it has been repealed by the repealing clause of the later general law of 1919.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 16, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This Department acknowledges your recent inquiry submitted on account of Mr. E. A. Henry, Assistant Examiner, which relates to the construction of the $4,000.00 appropriation item for the Soldiers' Home, mentioned in the Act of September, 30, 1920 (Acts 1920, p. 30).

While the appropriation of $4,000.00 is for the purpose of repairs and insurance on buildings and while it is conceivable in some circumstances that such a sum could properly be expended annually for the purposes named, yet nothing appears in the face of the statute to indicate anything except that this is a lump sum appropriation which is finally exhausted when expended one time. Other appropriations in the same statute are referred to as annual appropriations and it is noticeable that this appropriation is not made as an annual one. Presumably from the face of the statute, the Legislature intended this amount of $4,000.00 to take care of all the needs of buildings for repairs and insurance until further legislation on the subject.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 16, 1923.

Hon. S. W. Welch,
State Health Officer,
Capitol.

Dear Sir:

This acknowledges your recent inquiry submitted on account of Director W. C. Blasingame, which submits the following questions relating to the Act of February 19, 1919 (Acts 1919, p. 169) relating to a physician's certificate as a condition precedent to the granting of the marriage license to a man:

1. May a Probate Judge require that the certificate submitted be made by a physician from the local county where application is made?

2. May Probate Judge refuse a certificate made by a physician of another county on the ground that he does not know who is a licensed physician outside the local county, even though the name of the certifying physician appears on the official list issued by the State Medical Association?

3. Is the official list issued by the State Medical Association sufficient evidence for the Probate Judge as to who are physicians duly licensed to practice in Alabama?

It is my judgment upon a careful study of the act, and I so advise you, that the single statutory requirement made of an applicant for a marriage license is that he shall present a certificate in the required form by a physician "duly licensed to practice in this State." A Probate Judge cannot arbitrarily for reason of his own, decline such a certificate and decline to issue a license because of his own lack of information as to the qualifications of the certifying physician. It is the duty of the Probate Judge to know and to issue a license when the proper certificate is presented to him. The certificate of any licensed physician in Alabama sufficiently complies with the law, whether he reside in the local county or not. There is nothing in the law declaring what shall be evidence to the Probate Judge of the authority of the certifying physician and that is always a question of fact which the Probate Judge will have to decide for himself. The burden and the duty are his and he will use such means and such evidence as are available to him.

Yours truly,

HARWELL G. DAVIS,

Attorney General.

January 17, 1923.

Mr. B. C. Pope, Custodian,
Alabama Polytechnic Institute,
Auburn, Ala.

Dear Sir:

Replying to your recent inquiry as to the proper construction of the circular letter sent out by the Bureau of Commercial Economics concerning the use of advertising films in public institutions:

The contention in the first paragraph of the letter referred to, which is hereby returned to you, cannot be applied to the use of films for advertising purposes in your institution, as I assume from your letter you make charges for such advertising and the profits are applied to the operation of your institution. Any revenue applied to the purposes of the institute reduces the amount necessary to be appropriated for the purpose and hence reduces the burden on the taxpayer in proportion.

The second paragraph of the letter refers only to religious organizations, but inasmuch as educational institutions stand on the same footing and are in the same class, so far as exemptions from taxation are concerned, I have investigated this question and am of the opinion that your institution can display on your motion picture screen advertising pictures for the purpose of obtaining revenue therefrom without subjecting the property so used to taxation.

Acts 1919, p. 283, provides:

> "The following property and persons shall be exempt from ad valorem taxation; all property, real or personal, used exclusively for religious worship, for schools or for purposes purely charitable, provided, however, that property real or personal, owned by any educational, religious or charitable institution, society or corporation, *let for rent or for hire or use* for business purposes, shall not be exempt from taxation notwithstanding the income from such property shall be used exclusively for educational, religious or charitable purposes."

The principle that statutes exempting from taxation are to be strictly construed is not to be extended so far as to defeat the legislative intent; and such statutes as to property of religious and educational institutions should be more liberally construed. Cooley, Taxation 3rd Ed. 367.

But even under the strictest construction, giving the terms used the meaning in ordinary and common use, the use here referred to cannot be said to be "letting for rent, hire or use" such property. Moreover, in the light of the decisions rendered up to the time of the passage of this Act I do not believe it was the legislative intent to prohibit by the additional provision of

the 1919 Act such use as is now under consideration. Anniston City Land Co. v. State 160 Ala. 253; 185 Ala. 482. Hence, if this use is one prohibited at all it must come under the first part of the Act, which provides that such property must be "used exclusively" for educational purposes.

In 214 Mo. 656, the court held, "If the incidental use does not interrupt the exclusive occupation of the building for school purposes, but dovetails into or rounds out those purposes, then there could fairly be said to be left an exclusive use in the school on which the law lays hold."

There have been several decisions to the effect that when a farm or dairy is operated for scientific purposes of the school, the products being consumed by the school, the surplus products sold, and the proceeds applied to the purpose of the school, the property is not subject to taxation.

177 N. W. 29.
56 S. E. 594.
84 Atl. 567.

"A use incident to the main purpose for which the property is held is not one which falls within the prohibitions contemplated by the law."

68 Pac. 272.

In view of these authorities and for the reasons given above, I am of the opinion that as long as the motion picture screen is used by your institution for educational purposes and the display of advertising films is a mere incident to the operation for such purpose, and the proceeds from such display is devoted to the purposes of the institution, the property thus used is not subject to taxation.

As to the use of chairs in the aisles during the operation of the picture show, Acts of 1919, p. 1017, gives the State Fire Marshal the power and authority to regulate such matters, and I am enclosing herewith a copy of his rules and regulations.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

January 17, 1923.

Hon. S. W. Welch,
State Health Officer,
Capitol.

Dear Sir:

I have carefully considered your inquiry just submitted as to whether legal authority exists for Boards of Education or the State Board of Health or both in conjunction to exclude from the public schools of Alabama children who refuse to be vaccinated.

There is, so far as I am able to ascertain, no express requirements by statute that school children or other persons shall be vaccinated. Nor is there express statutory provisions requiring or authorizing the exclusion of children from school for lack of vaccination.

No case can be found which holds that compulsory vaccination may be required in the sense of compelling one to submit his person thereto, although the power to impose a fine or imprisonment for a failure to comply with a regulation requiring vaccination is sustained. Compulsory vaccination is practiced in England under requirement of parliamentary enactment. It is generally declared in the United States to be a valid exercise of the police power to delegate to local Boards of Health the authority to require under penalty, the vaccination of all citizens when it may be deemed to be necessary to the public health and safety, as when smallpox is present in a community or when its appearance may be reasonably apprehended.

Com. v. Jacobson, 183 Mass. 242.
67 L. R. A. 935 (Affirmed in 197 U. S. 11, 49 L. Ed. 643).
State v. Hay, 126 N. C. 999.
49 L. R. A. 588.
35 S. E. 459.

On the same authority it is held that a failure to comply with such ordinance is not justified because of one's own opinion or that of his physician that it would be dangerous for him to submit to vaccination. And the fact that one has decided opinions against vaccination does not exempt him from the operation of such vaccination.

There appears to be no doubt of the power of the Legislature to require vaccination as a condition of the admission to public schools and this, so far as a direct exercise of power by the legislature is concerned, appears to be true, even in the absence of a smallpox epidemic. No case has been found which denies the power of local regulating bodies during an epidemic of smallpox to refuse admission of unvaccinated children to the public schools. In the absence of an epidemic, the validity of regulations made by health and school authorities without express statutory authority has been both affirmed and denied in the courts of different States.

People, ex rel. Louise Jenkins v. Board of Education of Chicago, 17 L. R. A. (N. S.) 709.

In the note appended to the latter case, there is a full collection of interesting authorities.

It is well known that the State of Alabama has taken advance ground in the matter of a promotion of the public health. Its system of laws on the subject is most modern and is considered a model. Large powers are given to the State Board of Health and its authority to establish and enforce regulations is exceedingly broad. In the pamphlet edition of the public health laws, published by your department in 1920, it is provided that the State Board of Health (pages 8, 9 and 10) shall have authority to enforce the laws relating to public health, to investigate causes and means of prevention of disease, to inspect schools and other public places and to take steps to have improper conditions therein corrected or abated, to examine sources of water supply and to correct improper conditions, to make rules and regulations for administering health laws, which rules and regulations shall have the force and effect of law, to exercise control over County Boards of Health, to act as an advisory board in all matters of public health and to adopt rules and regulations for administering the health laws of the State and the regulations of the State Board of Health.

Under these health laws, it is, in my judgment, legally within the rights of the State and County Boards of Health to adopt regulations and enforce them, forbidding the presence in the public schools of children who have not been properly vaccinated.

In addition to the authority conferred on the Department of Health by law, attention is called to the fact that the school laws of the State vest large discretion and authority in the State and County Boards of Education. These boards have authority to promulgate and enforce rules for the proper government, regulation and protection of schools and school children. It is probable, in my opinion, that similar regulations with regard to vaccination could be legally adopted and enforced by the State and County Boards of Education.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 24, 1923.

Hon. John S. Mooring,
Chairman State Tax Commission,
Montgomery, Ala.

Dear Sir:

In re: Franchise Tax—Griesemer Graphite Company.

Your letter of January 3, 1923, addressed to Hon. Harwell G. Davis, Attorney General, has been turned over by him to me for reply.

In answer to same will call attention to Section 405 and Section 416 of the Revenue Act of 1919. These sections are as follows:

> "When a taxpayer makes a general assignment of his property for the payment of his debts or is declared a bankrupt, or when dead and his estate is or becomes insolvent, any unpaid taxes assessed against him or against his estate shall be a preferred claim, and shall be paid by the assignee, trustee or personal representative out of the first money received by him belonging to the trust or estate." Section 405.
>
> Section 416:
>
> "From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by

any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property, real or personal, assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

It will be noticed that Section 416 creates a lien upon each and every piece or parcel of property owned by a taxpayer for payment of *all taxes* assessed against him.

The franchise tax is assessed against a corporation as well as is the *ad valorem tax*, and, in our opinion, is included both by the letter and spirit of said Section 416. There can be no doubt, we think, that a corporation which pays a franchise tax is a "taxpayer," and, if a taxpayer, who owns property, a lien is created on such property for the payment of the tax. The only question as to franchise tax is when this lien begins to operate. In our opinion it begins as to franchise tax on the first of October succeeding the date when the franchise tax becomes assessable. This is, in fact, the first day of October of the year when such tax becomes assessable; the franchise tax year being the calendar year.

But if there were no Section 416, it is our opinion that by virtue of Section 405 of the Revenue Act of 1919, such tax becomes a preferred claim and should be by the trustee in bankruptcy paid out of the first money received by him belonging to the bankrupt estate. A mere reading of this section will doubtless be sufficient, as the statement therein with reference to such payment is as plain as language can make it.

Yours truly,

A. A. EVANS,

Special Assistant Attorney General.

February 1, 1923.

Hon. A. E. Jackson,
Superintendent of Banks,
Capitol,
City.

Dear Sir:

Your letter of this date addressed to the Hon. Harwell G Davis, Attorney General, has been referred by him to me for reply.

You wish to know whether or not a member of the Banking Board can also hold the position of Liquidating Agent to assist you in the duty of liquidating and distributing the assets of a bank taken possession of by you under the provisions of the banking laws of Alabama.

In answer to this inquiry will say that since the Banking Board itself is composed, usually, if not always, of active bankers, over whose business the State Superintendent of Banks has supervision, and with respect to whose banking business the Banking Board may act when occasion arises; and since there are no prohibitions in the law against the appointment of a member of the Banking Board as such agent, we are of the opinion that it is perfectly legal to make such appointment and that such appointment will neither violate the letter nor the spirit of the law.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 13, 1923.

State Banking Department,
Capitol.

Dear Sirs:

Attention Mr. H. G. Boyd.

Your letter of February 6, has been referred by Hon. Harwell G. Davis, Attorney General, to me for reply.

You wish to know if a bank with its principal place of business in one municipality in this State can employ an agent to operate in another municipality in the State to receive money for

deposit in such bank, to furnish change to people and to make a house to house canvass in such other municipality for deposits; but having no branch or office established in such other municipality.

In answer to your inquiry will say that Section 28 of the Banking Law merely prohibits the establishment of a branch bank or office at another than its principal place of business. It is our opinion that the acts complained of performed by agents or employes of the bank without any fixed place of business in such other municipality at any time, to which the public may go for banking accommodations, is not in violation of said Section 28. If, however, the Superintendent of Banks thinks that such conduct of a bank is unsafe for the bank or that such method of conducting a bank is unauthorized, it would, in our judgment, be proper for him to proceed to correct such conduct in accordance with the provisions of Section 10 of the Banking Law.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 14, 1923.

Hon. A. E. Jackson,
Superintendent of Banks,
Capitol.

Dear Sir:

Your letter of February 10, 1923, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You ask "If I am acting within my rights as Superintendent of Banks in refusing to accept surety bonds from a surety company authorized to do business in this State, covering the acts of officers and employes of banks as provided under Section 3 of an Act approved September 30, 1919, entitled "An Act to further prescribe the qualifications and duties of directors of banks and trust companies doing a banking business in this State."

In answer to the said inquiry will say that it is our opinion that said Section 3 places the entire duty both of requiring and approving the bonds of the officers and employes of a bank

upon the directors of such bank. The amount of each bond must be satisfactory to the Superintendent of Banks, but what company shall be surety upon such bonds rests primarily with the Board of Directors.

If, for any reason, the Superintendent of Banks should consider that such security rendered the bank unsafe, he might proceed under Section 10 of the Act approved September 30, 1919, entitled "An Act to create a Banking Department of the State of Alabama," etc., to have the matter rectified.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 16, 1923.

Miss Mae Amiss,
Clerk of the Circuit Court,
Jasper, Ala.

Dear Miss Amiss:

The Attorney General has referred to me your letter of the 17th inst., in which you make the following inquiry:

> "Will you please advise as to whom I am to pay solicitor's fees collected in cases in Circuit Court which have been appealed from County Court. The fee doubles in cases of this kind and should all go to the State or should the county have half?"

This inquiry is answered by Acts 1915, page 822, Section 7, which reads as follows:

> "For every conviction of a misdemeanor in the County Courts or Inferior Courts there shall be taxed and collected as a part of the costs and paid into the County Treasury the same solicitors' fees provided for convictions in such cases in the Circuit Court; and on appeal to the Circuit Court, the same shall be taxed as a part of the costs in addition to the solicitors' fee taxed for such conviction in the Circuit Court, and this solicitors' fee previously taxed in the County Court or Inferior Court, shall be paid when collected into the County Treasury."

I am of the opinion that where a defendant is convicted in the County Court and he appeals his case to the Circuit Court, in misdemeanor cases solicitors' fee should be taxed in the Circuit Court for the conviction in the County Court which should be paid when collected into the County Treasury, the other solicitors' fee collected belonging to the State.

Under the provisions of Section 7782 of the Code, it is the duty of each solicitor to attend each term of the court for which he is a solicitor and under the provisions of Section 7791 and other statutes fixing the salaries of Circuit Solicitors, the salaries of Circuit Solicitors are required to be paid out of the State Treasury. Solicitors' fees earned in the Circuit Court are, therefore, earned by a solicitor whose salary is paid by the State. Under the provisions of Section 7792 of the Code all fees which may be by law taxed as solicitors' fees against defendants on conviction secured by a solicitor who is paid a salary by the State, belong to the State and when collected must be paid into the State Treasury. Under the provisions of Section 7798 of the Code the Circuit Clerk is required at the end of each quarter of the fiscal year to report to the State Auditor and pay over to the State Treasurer all solicitors' fees by him collected, with the exception of his commission and the necessary expense of remitting such amount to the State Treasury.

I am therefore of the opinion that in all cases in which a defendant is convicted in the County Court the fee for that conviction should go into the County Treasury and the fee for conviction in the Circuit Court should be paid into the State Treasury.

Yours very truly,

LAMAR FIELD,
Assistant Attorney General,

February 20, 1923.

Hon. L. L. Herzberg, Chairman,
State Tax Commission,
Capitol.

Dear Sir:

The Hon. Thos. W. Sims, former associate member of the State Tax Commission, in a communication dated the 13th in-

stant, requested this office to advise whether the Alabama Farm Bureau Hay Association and the Alabama Farm Bureau Watermelon Association were liable for a franchise tax.

Section 229 of the Constitution of Alabama of 1901 provides that:

> "The Legislature shall by general law provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State which shall be in proportion to the amount of capital stock, but strictly benevolent, educational or religious corporations shall not be required to pay such a tax."

Pursuant to the requirements of this section of the Constitution, the Legislature of 1919, Acts 1919, page 291, Section 15. provided that:

> "Every corporation organized under the laws of this State except strictly benevolent, educational or religious corporations shall pay annually to the State an annual franchise tax of sixty cents on each one thousand dollars of its paid-up capital stock."

The exemptions provided for in the Act last mentioned are the same as the exemptions provided for in the Constitution. In the case of State, ex rel. Smith, Attorney General, v. Elba Bank & Trust Co., 91 So. 917, the Court held that a statute exempting banks from the payment of the franchise tax imposed on all corporations organized under the laws of the State violated the above mentioned provision of the Constitution for the reason that this statute undertook to exempt banks, while under the provision of the Constitution, no corporation could be exempted from the payment of the tax except "strictly benevolent, educational or religious corporations."

These corporations were organized under the "Co-operating Marketing Act" which was approved Oct. 29, 1921 (Acts Special Ses. 1921, p. 38). While Section 1 1-2 of this Act provides that associations organized thereunder shall be "non-profit" organizations, this declaration cannot be held as determining their char-

acter. The purpose and character is found by all the provisions of the Act and from these provisions it is clear that it is strictly a business organization operated for the profit of its contributing members. Such organizations are not either charitable, benevolent or educational within the meaning of the constitutional provision hereinbefore quoted.

It is therefore my opinion that these corporations are liable for the franchise tax imposed on domestic corporations.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 27, 1923.

Mr. P. B. Jarman, Jr.,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of February 14th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You desire a construction of Section 56 of Revenue Act 1915, as to whether the Tax Assessor was entitled to the compensation mentioned therein more than once.

In answer thereto will say that it is our opinion that the legislative intent was clearly that only one payment should be made and such payment was for making the plat books provided for by Sections 55 and 56 in the first instance. Where a county already had such books the Tax Assessor was not required to do anything with reference thereto for which pay was provided.

The pay provided for in Section 56 was evidently not intended as a complete compensation for the work to be done; but as a kind of a bonus, the work being but a part of the general duties of such tax assessor for which he is paid by commissions. It was evidently because the work of first making the book would be onerous, but when once made the work of keeping it up would not be any greater than any other system a tax assessor must adopt in order to do his work of assessment effectually. In other words, all subsequent work to be done in keeping these books

provided for by Sections 55 and 56, after they had once been completed, as provided therein, was to be simply a part of the general duties of the tax assessor, for which he is compensated by commissions. No pay under said Section 56 should be made until the books provided for by Sections 55 and 56 are complete. When complete, the pay as provided by said Section 56 should be made. After this the work of keeping such books up to date is but a part of the general work of the Tax Assessor for which no separate special pay was provided.

Yours truly,

A. A. EVANS,
Special Assistant Attorney General.

February 27, 1923.

Hon. W. S. Keller,
State Highway Engineer,
Montgomery, Ala.

Dear Sir:

Upon investigation, I find that the Act entitled "An Act Imposing an Excise Tax on Persons, Corporations, Co-Partnerships, Companies, Agencies or Associations Engaged in the Business of Selling or Distributing Gasoline or Other Liquid Motor Fuels in this State—providing for the Collection and Payment of Such Tax and the Distribution of the Funds Derived Therefrom and Fixing the Penalties for the Violation of Any of the Provisions of this Act," approved February 10, 1923, contains the following repealing clause:

> "Section 13. All other State excise and inspection taxes on the sale of gasoline imposed before the passage of this Act shall be and the same are hereby repealed, and all State laws and parts of laws in conflict with the provisions of this Act are hereby repealed."

It will be noted that this section does not repeal any of the provisions of the Act "To regulate the sale and exchange of gasoline, benzine and naphtha and other liquid motor fuel and provide for a legal standard and for inspection of such products,"

approved October 6, 1920, except that part of such latter act which imposes an inspection tax or fee.

In my opinion, this Act of 1920 is still in full force and effect except Section 9 thereof, which imposes an inspection fee of one-twentieth of one per cent for each gallon of such motor fuel.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 28, 1923.

Hon. L. L. Herzberg, Chairman,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of the 27th inst., submits to this office the following inquiry, to-wit:

> "Is the State Tax Commission authorized by the Act approved February 10, 1923, which was House Bill 163, to require reports of sales of gasoline by persons retailing gasoline to the public?"

Section 3 of this Act makes it the duty of every "distributor" and "retail dealer" in gasoline to render to the State Tax Commission true and correct statements of sales of gasoline and to furnish the Commission with such additional information as the Commission shall require.

A "retail dealer," in the usually accepted and generally understood meaning, is one who is engaged in selling in broken or small quantities directly to the consumer. We generally speak of a person who operates what is commonly known as a "filling station" as a "retail dealer" of gasoline.

It is clear that unless the Act itself defines the term "retail dealer" as used in such Act so as to exclude its generally understood meaning, the tax is imposed on the retailer of gasoline, such as the operator of a filling station, and requires such retailer to make reports of sales. Then does the Act by its terms wrench

the term "retail dealer" from its proper sense so as to exclude retailers from the provisions of this act?

Section 1 of the Act contains the following provisions:

> "The word 'person' means and includes every person, corporation, co-partnership, company, agency or association. The term 'distributor' shall include any person who shall engage in the selling of gasoline as herein defined in this State by wholesale in domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The term 'retail dealer' shall include any person herein defined as 'distributor' who is also engaged in the sale of gasoline as herein defined, at any place in this State, in broken quantities."

It will be noted that the provision relative to the word "person" is "The word 'person' *means* and includes," etc., while the provision relative to the term "retail dealer" is "The term 'retail dealer' shall include persons, etc.," omitting the word "*means*" used in the provision relative to persons. In the case of in re Harper, 175 Fed. 417, 423, it is said:

> "Section 1, Subdivision 11 of the Act provides: 'Debt shall include any debt, demand or claim provable in bankruptcy.' It will be noted that some of these definitions in Section 1 read *'shall mean,'* while others read *'shall include.'* It was not intended that definitions of words used in the Act which read *'shall include'* should exclude other meanings or definitions of the word, or limit the ordinary and well-understood meanings."

The word "include" as used in this statute is not generally a word of limitation. Frazer v. Bentel, 161 Cal. 390; 119 Pac. 509. It is my opinion that the provision in Section 1 of this Act relative to the term "retail dealer" does not limit its well-understood meaning and that as used in the Act it includes a person selling in small quantities directly to the consumer, for instance, a person operating a filling station. It follows that the State Tax Commission has the authority to compel retail dealers of gasoline to make reports.

To reach any other conclusion would absolutely exempt every retailer of gasoline in the State, unless such retailer was also a wholesaler within the State, from the payment of the tax: it would discriminate between retailers whose wholesale business was in this State and the retailers whose wholesale business was in another State, it would leave the tax where it could be absolutely and entirely avoided by an abandonment of the wholesale businesses in this State and shipping direct to the retailer, and it would also deprive some of the provisions of the Act of any field of operation. It is not to be presumed that the Legislature intended any such result.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 28, 1923.

Mr. C. B. Smith,
Associate Member
State Tax Commission.

Dear Sir:

Your letter of February 20th addressed to the Hon. Harwell G. Davis with letter attached thereto from Mr. Clem Gazzam to you have been turned over by him to me for reply.

You ask whether or not in determining the amount of franchise tax to be paid by a foreign corporation, there should be omitted from the amount of the actual capital employed in this State the mortgage debts due such corporations, which mortgages have been recorded in this State and the privilege filing tax paid thereon.

In answer thereto will say as follows:

Section 16 of the Revenue Act of 1919, upon the last sentence in which Mr. Gazzam relies for exemption of his foreign corporation, reads as follows:

> "Section 16. That every corporation organized under the laws of any other State, nation or territory, and doing business in this State, except strictly benevolent, educational or religious corporations, shall pay annually to the State an annual franchise tax of sixty cents on each one thousand dol-

lars of the amount of capital actually employed in this State. In ascertaining the amount of the annual franchise tax which shall be paid by any foreign corporation doing business in this State under this section, there shall be deducted from the amount of the capital employed by such corporation in this State the aggregate amount of loans of money made by such corporations in this State, and which shall be secured by existing mortgage or mortgages to it on real estate in this State, and upon which mortgages there shall have been paid the recording privilege tax provided by law."

If the said last sentence is constitutional, then, of course, no franchise tax is due by a foreign corporation doing business in this State where the only capital employed by it in this State consists of loans secured by mortgages which are recorded in this State and the privilege filing tax for record has been paid. This last sentence of said Section 16 is, in our opinion, not constitutional, and is void, and cannot be considered by the State Tax Commission for any purpose.

Section 232 of the Constitution reads as follows:

"No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with the Secretary of State a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the State. The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this State. Strictly benevolent, educational or religious corporations shall not be required to pay such a tax."

This section of the Constitution was construed by our Court of Appeals and the opinion was approved by our Surpeme Court in the case of Elba Bank & Trust Company, 91 So. 917. It was there held that the provision of the Revenue Act of 1911 and of the Act of 1915, which attempted to exempt banks and building

and loan associations from the payment of this franchise tax was void and that the Acts must be construed just as though the provision exempting banks and building and loan associations had not been written in the law, for the reason that the Constitution named the only exemptions that could be allowed, viz., strictly benevolent, educational or religious corporations.

If the statute could say what should and what should not be considered as capital employed in the State, or could say that certain kinds of capital employed in the State by a foreign corporation shall be deducted in ascertaining the amount of capital employed in the State upon which the franchise tax should operate, then the Legislature would be doing by a very slight indirection what the Supreme Court said in said Elba Trust & Banking Company case could not be done directly. This is shown very clearly in the case under consideration where Mr. C. Gazzam claims that his corporation is exempted from the payment of the franchise tax by reason of said second sentence in Section 16 of the Revenue Act of 1919.

The Constitution, Section 232, provides as already said that "The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, (a foreign corporation) but such franchise tax shall be based on the actual amount of capital employed in this State."

The foregoing is a mandate made by the Constitution of Alabama. The Legislature undertook to carry into effect this mandate, but after providing for such a franchise tax, in strict accordance with the Constitution, in the first sentence of said Section 16 of the General Revenue Act of 1919, it undertook in the second and last sentence of said section to exempt from the operation of the statute, as capital employed in this State, "the aggregate amount of loans of money made by such corporations in this State, and which shall be secured by existing mortgage or mortgages to it on real estate in this State, and upon which mortgages there shall have been paid the recording privilege tax provided by law."

This attempted exemption is clearly contrary to the mandate of the Constitution and is, in our opinion, void. The first sentence of said Section 16, being a full and complete compliance with said Section 232 of the Constitution, should be allowed to

stand, and the second or last sentence thereof being in violation of the said section of the Constitution should be treated as void and as though it had never been written. This conclusion is further strengthened by Section 380 of said Revenue Act of 1919, which is as follows:

> "Section 380. Should any court declare any section or schedule of this Act unconstitutional, it shall not affect the remaining sections or schedules, but the same shall remain in full force and effect."

This section was Section 34 of the Revenue Act of 1911 and our Supreme Court construed it in re State ex rel Attorney General v. Pea River Power Co. 91 So. 920, as follows:

> "It is insisted upon application for rehearing that the exception or exemption in Section 12 of the Act of 1911 (page 170) is not so separable from or independent of the entire section as to authorize the upholding of said section after elimination of the exception or exemption, and that as the exception or exemption must be stricken as violative of the Constitution the entire section should fall; that Section 289 of the Act of 1915 (page 486) as considered in the Bank of Elba case, 91 South. 917, is much broader in evincing a legislative intent to preserve all portions of the Act that may not be declared unconstitutional. True, Section 289 of the Act of 1915 says, 'If any section, clause or provision shall be held void or ineffective for any cause, it shall not affect any other clause or provision of this Act;' while Section 34 of the Act of 1911 (page 184) provides that:
>
> 'Should any court declare any section of this Act unconstitutional, it shall not affect the remaining sections, but the same shall remain in full force and effect.'
>
> We think that the word 'section' as used in Section 34 of the Act of 1911 does not mean an entire numeral section, but a separate and separable clause, sentence, or provision. In other words, we think that said saving provisions mean practically the same, though couched in different language. City of Montgomery v. Royal Exchange, 5 Ala. App. 318, 59 South. 508."

For the foregoing reasons it is our very definite opinion that such loans must be considered as capital employed in this State by a foreign corporation, and that though all the capital employed in this State by certain corporations consists of such loans, they are nevertheless due a franchise tax, and such loans must be considered as capital employed in the State in estimating the amount of franchise tax due by such corporation.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

March 1, 1923.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Judge:

Your letter of February 17th, 1923, addressed to the Hon. Harwell G. Davis, Attorney General, has been turned over by him to me for reply.

You wish to know if a building and loan association in seeking to increase its capital stock is exempt from the payment of the fees provided for by Section 3453 of the Code of 1907.

In answer to your said inquiry, will say that building and loan associations are not subject to any of the provisions of Article I, of Chapter 69 of the Code of 1907. These associations are governed by the provisions of Article 17 of said Chapter 69. The increase of capital stock of a building and loan association must be accomplished in accordance with Section 3601 of the Code, which is a part of said Article 17.

You state in your letter that the question arose on the appliton of the Alabama Building and Loan Association to increase its capital stock. In giving the foregoing opinion, we presume that the charter or business of said association falls within the definition of "Building and Loan Association" as laid down in Section 3603 of the Code of 1907.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

March 3, 1923.

Mr. F. C. Marquis,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of March 2nd addressed to Hon. Harwell G. Davis, Attorney General, has been turned over by him to me for reply.

You state that we have in the State several large theatres in which are given regular theatrical performances and also regular moving picture shows. You wish to know whether the persons or companies operating such theatres and moving picture shows must take a license under Schedule 106 and also under Schedule 107.

In reply we will say that Section 361 provides:

> "That every person, firm, company, corporation, or association engaged in any business, vocation, occupation, calling or profession hereinafter enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a license, and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this Act."

In making a schedule of the several matters for each of which a license must be paid and naming the amount that must be paid in each instance, persons conducting a theatre, vaudeville or variety show are required to pay a license as provided by Schedule 106, while persons engaged in conducting a moving picture show are required to pay a license as provided by Schedule 107. These two matters are separate and distinct so far as license is concerned; both cannot be done under one license any more than could a merchant sell cigarettes and talking machines under one license. The law separates the two for license purposes and the fact that the two kinds of shows are often carried on in the same building under the same management can have no effect upon the amount of license to be paid for each under our present Revenue Act.

Yours very truly,

A. A. EVANS,
Special Assistant Attorney General.

March 3, 1923.

Hon. W. H. Shaw,
County Solicitor.
Tuscumbia, Ala.
My dear Sir:

Query: Should officers of the county who draw stipulated monthly salaries present their claims to the Court of County Commissioners each month for allowance before the Probate Judge is authorized to draw their warrants?

County officers whose salaries are fixed by statute need not present their claims for salary to the Court of County Commissioners since the Commissioners have no authority to increase, decrease or deny the statutory compensation.

Ward v. State, 82 So. 660.

In this class are County Solicitors, provided for by Acts 1915, page 820, Probate Judges, Tax Collectors, Tax Assessors, County Commissioners in counties of over seventy-five thousand and under ninety-five thousand population, provided for by Acts 1920, page 21, Sec. 1.

Acts 1919, page 310, Sec. 82, provides specifically that the warrant for the salary of Tax Adjuster must be drawn by the Court of County Commissioners. This provision delegates no discretionary power and is merely a ministerial act.

Section 217, Code of 1907, provides that County Treasurers shall receive such compensation as may be allowed by the Court of County Commissioners. Under this provision, it is, of course, within the power of the court to require that salary claims shall be submitted to them for approval. But if the commissioners have made an order fixing a stipulated monthly salary to be paid the County Treasurer, it is our opinion that order is sufficient authority to the Probate Judge to issue warrant unless the order specifically provides otherwise.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

March 7, 1923.

Hon. S. P. Dunn,
Judge of Probate, Conecuh County,
Evergreen, Ala.

Dear Sir:

Replying to your letter of the 3rd instant, I beg to advise that the present statute levying a license tax on motor vehicles and providing for the distribution thereof, has been construed for many years by the practice of all officials charged with administering the law as being the entire tax on motor vehicles levied by the license provisions of the revenue law. In other words, Section 362 which provides for the collection of an additional license tax for the county of 50 per cent of the amount paid for the use of the State does not apply to schedules 6, 2, and 9 of Section 361. Acts 1919, page 395.

The provisions of these subdivisions (schedules 6, 2 and 9) requiring a division of the tax collected clearly indicate that Section 362 of the Act should not apply to these particular schedules. Furthermore than that, this was the construction given the law as contained in the previous statutes and I am sure that the courts would hold that the re-adoption of the statute also adopts the construction theretofore placed upon it by the officers whose duty it was to administer the law.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 7, 1923.

Judge L. L. Herzberg, Chairman,
State Tax Commission,
Capitol.

Dear Judge:

Subject: Filing tax on oil leases.

Your letter of March 1st, 1923, addressed to Hon. Harwell G. Davis, enclosing letter from Judge N. P. Tompkins, has been turned over to me for reply.

You wish to know if the two contracts, copies of which you enclosed, were subject to the filing tax provided for by Schedule 71 of Section 361 of the Revenue Act, 1919. One contract is between D. W. Hargett et al. and Chester E. Dexter, Trustee, etc.; the other is between J. E. O'Reilly and wife and Chas. E. Dexter, Trustee, etc.

In answer to your inquiry will say that it is our opinion that both of these contracts are contracts of sale or deeds which fall within the provisions of said Schedule 71. Both have deferred payments which under said schedule must be treated as mortgages to the extent of such unpaid balance.. They are also, in our opinion, conditional sale contracts. The fact that they are called leases in the contract is immaterial. In estimating the amount upon which the filing tax is to be paid, the total sum of the minimum deferred payments should be used in these contracts, as there is no other basis available for making the estimate for the filing tax.

The only reason for recording these instruments is that they are contracts of conditional sale or deeds and, since some of the payments are deferred, they necessarily fall within the terms of said Schedule 71.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

March 8, 1923.

Alabama Public Service Commission,
State Capitol:

Dear Sirs:

Your letter of 15th ult. requests the opinion of the Attorney General upon the following question:

Has the Public Service Commission jurisdiction over the matter of regulating a street railway with respect to the prohibition of or the regulation of the use of one man and one entrance street cars within the municipalities of this State where the ground of objection to the use of such cars is that white people and negroes are necessarily brought into close contact in entering and in leaving the cars?

The regulation and enforcement of the separation of the white race and the negroes falls clearly within the police powers of the State and within the police powers of the municipality when such powers have been delegated by the State to the municipality.

Plessy v. Ferguson, 163 U. S. 537, 41 Law Ed. 256, 260.

The case which causes your inquiry arises in the City of Birmingham. The City of Birmingham has been vested with police power which includes the power to prescribe and enforce reasonable regulations with respect to a proper separation of the races.

Acts of Alabama of 1915. Pages 789, 795. (Section 9 of Act).

What is known as the Alabama Public Utility Act of 1920, in Section 66 thereof provides as follows:

"Nothing in this section or elsewhere in this Act contained, is intended or shall be construed, (a) To limit or restrict the police jurisdiction or power of municipalities over their streets and other highways or public places or the power to maintain or the power to require maintenance of the same * * * (d) in respect of matters other than rates and service regulations, to repeal any power of any municipality, (1) to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience, or (2) to protect the public against fraud, imposition or oppression by utilities within their respective jurisdiction, or (3) to require the discharge by utilities of their respective duties within such municipalities whether arising out of contracts with the municipality, or by statute or a regulation by the Commission, or otherwise."

General and local Acts of Alabama, Special Session 1920, pages 38, 57.

It is my opinion that at the time of the adoption of the Alabama Public Utility Act of 1920, the City of Birmingham had

the power and authority to adopt and enforce reasonable police regulations and ordinances relating to a separation of the races and as said Act specifically provides that in respect of matters other than rates and service regulations nothing contained in the Act shall be construed to repeal any power of any municipality to adopt and enforce reasonable police regulations and ordinances; therefore jurisdiction over the matter here in question under said Act was reserved to the municipalities and not conferred upon the Public Service Commission. The matter here under consideration in my opinion does not fall within "service regulations," and I do not think it can reasonably be inferred that it was the intention of the Legislature in giving the Commission jurisdiction over rates and "service regulations," for the Commission's legislative or administrative powers to extend so far as prescribing rules to enforce a separation of the races.

Yours very truly,
HUGH WHITE,
Special Assistant Attorney General.

March 10, 1923.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.
Dear Sir:

Query: Can the funds collected from the levy of the three-mill local district school tax be used in buying a truck to transport school children from that district to a school in another county?

Your request for an opinion on this question has been referred to me for reply.

Acts 1919, page 612, Section 8, provides:

"Whenever such a levy as is provided for in this Article is made it shall be the duty of the Tax Collector within and for that county to collect such a tax in the same manner and under the same requirements and laws as the taxes of

the State are collected, and he shall keep said amount separate and apart from all other funds, and keep a clear and distinct account thereof, showing what amount is paid, and turn the same over to the County Treasurer of school funds, whose duty it shall be to receipt therefor, and pay out the same on monthly pay rolls, with the authority and approval of the County Board of Education upon uniform blanks prescribed by the State Superintendent of Education; *provided that the funds arising from levying the special tax for school purposes in any school district shall be used for the exclusive benefit of the public schools of such district."*

To answer your question it is necessary only to define the term "public schools" as used in this provision. I have been unable to find that this term has been defined by the courts of this State.

The word "school" is not confined in its meaning to the institution, building, equipment, etc. It may also mean a body of pupils or those who attend an institution of learning.

Webster's International Dictionary—Schools—subdivision 6.

We are of the opinion that this definition is not contrary to the spirit and intention of the law and that the buying of a truck to transport the *children of the district* to another school is a legal expenditure of the funds collected from the three-mill tax.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

March 16, 1923.

Hon. H. R. Denton,
Treasurer of Blount County,
Oneonta, Ala.

Dear Sir:

Your letter requests me to advise you whether or not the law requires the payment of warrants issued to local registrars of vital statistics.

Section 20 of the Health Law of 1919 provides in part as follows:

> "All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registered district is located by certification of the State Registrar." (Gen. Acts, 1919, p. 926.)

Other provisions of this act fix the amount to be received by the local registrars. From these provisions it will be seen that the obligation of the county to pay local registrars is absolutely fixed by law.

In the case of Brown, Treasurer, v. Gay-Padgett Hardware Co., 188 Ala. 423, the Supreme Court held "That the obligations absolutely fixed by law are preferred claims" and that such claims should be paid after the payment of claims enumerated in Section 153 of the Code as amended by Acts of 1919, page 1110 and before the payment of any claim which is voluntarily incurred by the county.

It is my opinion, therefore, that you should pay the warrants issued by the State Registrar in payment of the local registrars as a preferred claim of the second class, that is, after the payment of claims mentioned in Section 153 of the Code as amended by the Acts of 1919.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 17, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Attention Mr. Henry.

You request to be advised whether the County Board of Education has authority to borrow money to pay the salaries of teachers and pledge for the payment of such loan the school funds of the succeeding fiscal year.

The answer to this inquiry depends on the construction of Section 24, Article 5 of the School Code, which is as follows:

> Section 24. The County Board of Education shall have authority, upon the recommendation of the County Superintendent of Education, to borrow money on the credit of the school fund of the county to meet salaries of teachers and current expenses when the *current funds on hand* are not sufficient to meet the same, to be secured by a pledge of *the current revenues of the year.* All such current loans, except such as are based on county and district local tax proceeds, shall be paid within the school year in which such current loans are made, and from the funds accruing for the support of the schools within such given school year. The amount so borrowed shall at no time exceed one-third of the sum estimated for current expenses, as shown by the school budget for that year.
>
> General Acts of Ala. 1919, p. 587.

The first provision of this section grants the authority to the County Board of Education to borrow funds for certain purposes, but limits the power of the board to pledging for the payment of such loans "the current revenues of the year." "Current revenues of the year" can mean only revenues available during the fiscal year the loan is secured and cannot be construed to mean the revenue of any future fiscal year. It is true that the second sentence of this section indicates that the funds derived from the county and district school tax of succeeding years might be applied to the payment of such loan. THIS LATTER PROVISION, HOWEVER, gives no authority to the County Board of Education to borrow or to pledge any funds and to construe it as authorizing by implication the pledging to the payment of such loan, school revenues of future years places this provision in conflict with the definite provisions contained in the first sentence of the section.

In the case of Blumberg Shoe Company v. Phoenix Assurance Co., 203 Ala. 551, 84 South. 763, the Supreme Court said:

(1) There is a strong presumption that the Legislature does not intend to contradict in one paragraph of a legislative act that which it has deliberately declared in another. Hence the familiar rule of construction which imputes to an apparently or possibly contradictory paragraph any rational meaning which will avoid its seeming contradiction of another paragraph whose meaning is clear and certain. Harrington v. State, 200 Ala. 480, 76 South. 422.

FOLLOWING THIS RULE OF CONSTRUCTION I AM OF THE OPINION THAT IT WAS NOT INTENDED TO PERMIT THE COUNTY BOARD OF EDUCATION TO BORROW MONEY FOR THE PAYMENT OF TEACHERS' SALARIES AND PLEDGE THE REVENUES OF THE FUTURE FISCAL YEAR FOR THE PAYMENT THEREOF. The evident purpose of the law is to anticipate the revenues of the current fiscal year where the funds are not immediately available but are presently needed. It is possible that the lawmakers having in mind the fact that Section 7 of Article 12 of the School Code made definite provision for the issuing of warrants against the county and district tax for building purposes, included this exception in the second sentence of Section 24, Article 5 for the purpose of indicating that funds derived from the district and county millage school tax of future fiscal years were available for the payment of the interest accruing on such warrants.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 22, 1923.

Hon. William W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

Your request for an opinion from the Attorney General in the matter of the removal from office as Jury Commissioner of Russell County of W. Van Thompson upon the request and infor-

mation furnished by Dr. R. B. McCann, of Seale, Ala., has been referred by the Hon. Harwell G. Davis, Attorney General, to me for reply.

As we understand the facts upon which Dr. McCann relies, they are follows:

W. Van Thompson was regularly appointed by Governor Thomas E. Kilby, a Jury Commissioner of Russell County just prior to the expiration of his term of office as Governor and a commission was issued to him by Your Honor, as Governor, upon taking up the duties of your office, as required by law. Thompson was duly qualified as such Jury Commissioner and is exercising the functions of such office. It is claimed by Dr. McCann that he was not at the time of his appointment qualified to hold said office for the reason that in 1909 and again in 1910 he was convicted in the Superior Court of Muscogee County, Georgia, of a misdemeanor, in that he violated the prohibition law. Dr. McCann predicates your right and power to declare the office which he holds vacant, and to appoint a successor, upon Section 30 of the Act approved August 31, 1909, Acts 1909, page 317.

A careful perusal of said Section 30 reveals the fact that the Legislature had no reference to a disqualification existing at the date of appointment, but only to such disqualifications as may subsequently take place. Not only must the disqualification take place after the appointment, but "the fact of such disqualification and the ground or reason therefor shall be certified to the Governor by the Judge of the Circuit Court in that county." Even then if he should not voluntarily abandon the office, in our opinion, a proceeding in the nature of *quo warranto* would be necessary in order to oust him from the office.

As is said in Ruling Case Law, Vol. 22, pages 663 and 664, Section 5, "A person actually obtaining office with the legal indicia of title is legally in possession thereof and is a legal officer until ousted. * * * If the office is actually filled by one holding under the legal indicia of title, there can be no inquiry except upon *quo warranto,* and until the incumbent is ousted, no one else can have any enjoyment of the office.

Further construing said Section 30 of the Act of 1909, it is our opinion that it was the legislative intent and meaning that

the Judge of the Circuit Court of the county should certify only such matters of disqualification as are shown by the records of the Circuit Court of which he is the judge, or such matters as he could take judicial notice of. Certainly he could not certify that because a man was convicted of a misdemeanor not involving moral turpitude in 1910, he was therefore not a man of good moral character in 1923.

Inasmuch, however, as the Judge of the Circuit Court of Russell County has not certified any disqualification, Section 30 of the said Act of 1909 confers an authority upon you, as Governor, to declare the office vacant or to appoint a successor.

In our opinion, should the Circuit Judge certify to a disqualification, and the office should be declared vacant, *quo warranto* proceedings or proceedings in the nature thereof would be necessary to oust him, and if on such trial it should appear that the matter certified was untrue, no ouster would be awarded, because said Section 30 provides not only that a disqualification shall be certified, but that it shall in fact exist.

In the case under consideration, it appears from the statement of Dr. McCann that the disqualification complained of existed at the time of Thompson's appointment. Such being the case, said Section 30 has no application, and the only way in which such disqualification can be inquired into is by a proceeding in the nature of *quo warranto*.

Very respectfully,
A. A. EVANS,
Special Assistant Attorney General.

March 22, 1923.

Hon. Joseph John,
Assistant United States Attorney,
Mobile, Ala.

Dear Sir:

Replying to your inquiry of the 20th inst., I beg to advise that the Act approved February 10, 1923, requires an excise tax to be paid by persons selling gasoline in this State. (Acts of Alabama, First Session 1923, p. 36.) The amount of this tax is measured by the number of gallons sold.

The tax is for the privilege of engaging in that particular business and is not a sales tax collected from and required to be paid by the purchaser of gasoline nor is it a tax imposed on the article itself. In principle, there is no difference between the license tax heretofore required to be paid in this State by operators of filling stations and the present tax which is measured by the number of gallons sold, both being an excise tax required for the privilege or right to conduct that character of business.

It follows that this is not a tax required to be paid by any agency of the national government and that the party from whom the government agency purchased would not be entitled to a reduction in the amount of privilege tax paid in proportion to the amount sold to such agencies of the national government. In other words, the amount of license tax is measured by the amount of gasoline sold regardless of the person to whom such sale is made.

Whether or not the seller of gasoline includes the amount of this privilege tax in the sale price of the gasoline for the purpose of caring for this particular expense, and whether or not the agencies of the national government are willing to pay a price for gasoline which is sufficient to cover this expense, are matters over which the State has no control.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 26, 1923.

Hon. D. C. Ball, Pres.,
Board of Revenue of Jefferson County,
Birmingham, Ala.

Dear Sir:

In your letter of the 23rd inst. is contained the following statement of facts and inquiry:

Jefferson County has authorized the issue of one million dollars of bonds for road purposes. Acting upon the opinion of Messrs. Storey, Thorndike, Palmer & Dodge, Boston bond attorneys, that these bonds could be sold at private sale without advertisement; that on the 21st inst. you sold this million dollars of

bonds at a very substantial premium at private sale. You wish to be advised whether or not either of the Acts of 1920 relative to the issue of bonds by a county prevents a private sale of these bonds.

The Act approved October 6, 1920, (Special Session 1920, p. 166) is entitled an Act to authorize the Courts of County Commissioners or Boards of Revenue and governing boards of municipalities in certain counties "to sell or dispose of bonds of such counties or municipalities for less than the face value of such bonds" and for other purposes. The provisions of the Act could not be construed to be broader than the caption of such Act without violating the provisions of Section 45 of the Constitution of 1901. This Act, therefore, must be limited in its operation to those sales where less than the face value of the bond is received by the county. Such is not the case under consideration and in my opinion, no provision of this Act affects the sale of the Jefferson County million dollar road bonds heretofore mentioned.

The Act approved October 8, 1920, (Acts Special Session, p. 116) is entitled an Act "To regulate the rate of interest to be paid on county and municipal bonds and to provide for the sale of such bonds." It will be noted that while Section 2 prohibits the private sale of municipal bonds and provides that such sale must be advertised, that the term "municipal bonds" as used in that section clearly applies only to city bonds and not to county bonds. It is my opinion, therefore, that there is nothing in this Act which prevents a sale of these bonds without advertisement.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 28, 1923.

Hon. W. E. Brooks,
Deputy Solicitor,
Brewton, Ala.

Dear Sir:

The Attorney General has requested me to reply to that portion of your letter of the 23rd inst. requesting an opinion as to the proper disposition of costs in a case involving a joint

prosecution of five defendants charged with assault and battery in the County Court, in which two of the defendants plead guilty, three of them having been convicted, appealing to the Circuit Court and there found guilty.

Solicitors' fees should be taxed both in the County Court and in the Circuit Court, under the provisions of Acts 1915, page 822, Section 7. However, in the conviction of several defendants jointly indicted but one solicitor's fee can be taxed as part of the costs in each court against all found guilty. Brown v. State, 46 Ala. 148. So far then as the solicitor's fee is concerned, one fee should be charged in each court, the County Court and the Circuit Court, just as though a single defendant had been prosecuted and convicted in the County Court, and had taken an appeal to the Circuit Court and there been convicted.

As to the costs against the three who appealed, a statement of all the costs in the County Court should be sent up with the transcript. Code 1907, Section 6726. Burns v. Moranne, 128 Ala. 493, 499.

If the defendants should be sentenced to hard labor for payment of costs, each defendant could not be sentenced to work out all of the costs but only his proportionate part. Dawson v. Sayre, 80 Ala. 444. When, however, two or more defendants are jointly convicted, though a separate judgment be rendered against each, each is jointly liable for the entire costs (except in rare instance indicated in the case just referred to) though but one payment can be enforced. Dawson v. Sayre, *supra*. Each of the five would therefore be liable for all costs in the County Court, and each of the three who appealed would be liable for all costs in both courts.

In the case of Newman, et al. v. State, 160 Ala. 102, the Supreme Court held in a case involving joint defendants that (1) "The defendants were jointly and severally liable for the common costs of the joint prosecution; (2) the satisfaction of execution against either defendant will work a satisfaction as to both; and (3) between themselves, the defendants, if they paid unequally could recover contributions one from another."

To summarize the matter, I am of the opinion:

(1) That each of the three defendants appealing to the Circuit Court and there convicted would be liable for all of the

costs in both courts, and that the two who did not appeal would be liable for all costs in the County Court. Statement of all costs in the County Court should be sent up to the Circuit Court.

(2) That costs should be taxed for only one case in either court, but such costs would include one solicitor's fee for the County Court and one for the Circuit Court.

(3) That when the costs are satisfied by one defendant it is a satisfaction for all who are jointly liable with him, but neither defendant could be sentenced to work out all the costs but only for his proportionate part, that is to say, one-fifth of the costs in the County Court for each of the two defendants who did not appeal, and as to those who appealed, one-fifth of the costs in the County Court and one-third of the costs in the Circuit Court.

Execution may be issued against each defendant for the costs unless costs are taxed against the prosecutor. Code, Section 6646. If execution should be returned "no property found," the costs may be paid out of any funds in the fine and forfeiture fund which may be available after paying registered claims of State witnesses. Code 1907, Section 6889.

If, however, a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient surety for the fine and costs. Code 1907, Section 7632. And in such case execution may also be issued for the fine and costs, or any portion thereof remaining unpaid. Code 1907, Section 7633. If such fine and costs are not paid or a judgment confessed, the defendant must be imprisoned in the county jail, or at the discretion of the court, sentenced to hard labor for the county according to the scale set out in Section 7634 of the Code. If judgment is rendered against the accused that he perform hard labor for the county, if the costs are not presently paid or judgment confessed therefor, then the court may impose additional hard labor for the county for such period, not to exceed ten months, as may be sufficient to pay the costs at the rate of seventy-five cents per day. If, in such event, all of the costs or any part thereof, are not worked out, if return of "no property found" has been made, the same may be paid out of the fine and forfeiture fund. Wilson, County Treasurer, v. Acuff, 92 So. 81. If the fine be paid, the prisoner may be sentenced to hard labor to pay the costs. Ex parte Joice, 88 Ala. 128. The prisoner is not entitled

to discharge on payment of the amount he would earn during the term of the sentence but must pay the entire amount taxable against him. Pierce's case, 89 Ala. 177.

If I can be of further service in this connection, please advise.

Yours very truly,
LAMAR FIELD,
Assistant Attorney General.

March 29, 1923.

Hon. D. C. Ball, Pres.,
Board of Revenue of Jefferson County,
Birmingham, Ala.

Dear Sir:

In your letter of the 23rd inst. is contained the following statement of facts and inquiry:

Jefferson County has authorized the issue of one million dollars of bonds for road purposes. Acting upon the opinion of Messrs. Storey, Thorndike, Palmer & Dodge, Boston bond attorneys, that these bonds could be sold at private sale without advertisement; that on the 21st inst. you sold this million dollars of bonds at a very substantial premium at private sale. You wish to be advised whether or not either of the Acts of 1920 relative to the issue of bonds by a county prevents a private sale of these bonds.

In my letter of the 26th inst., I expressed the opinion that there was no provision of law requiring the Board of Revenue to give notice that such sale was to be made by advertising the same in the newspapers. I am today in receipt of your letter of the 28th inst., which enclosed the copy of the opinion of Messrs. Matthews & Morrow, which holds that the Act approved October 6, 1920 (Acts Special Session 1920, p. 166) requires an advertisement of such proposed sale as a condition precedent to the right of the Board of Revenue to make such sale.

So far as is necessary to a determination of the question under consideration, the caption of this Act is as follows, "To authorize * * * Boards of Revenue * * * in counties having * * * one hundred and fifty thousand inhabitants,

or more to sell * * * bonds of such county * * * for less than the face value of such bonds."

Section 45 of the Constitution of Alabama of 1901 provides "That each law shall contain but one subject which shall be clearly expressed in its title." By virtue of this section of the State Constitution "the title becomes a part of the Act itself, and, upon the principle that an Act will not be construed into unconstitutionality if another construction is possible, may be a limitation upon the enacting part of the law." Jones v. Stokes, 179 Ala. 579; 60 So. 280; State ex rel. City of Mobile v. Board of Revenue and Road Commissioners, 202 Ala. 303; 80 So. 368. The enacting part of this Act, when considered as an entirety, clearly indicates that Section 5 thereof applies only to sales when less than par is received for the bonds. But if this was not clear the limitation in the title would compel us to give Section 5 this meaning. In the case of Board of Revenue of Jefferson Co. v. Hewitt, 206 Ala. 405; 90 So. 781, the court in speaking of this Act said, "The policy of this Act is to provide for a sale of bonds by counties * * * of the class indicated at the *discount permitted*, and then to throw around such sale reasonable provisions, conducive to the obtaining of the best price possible." * * * The title gives notice of the classification of counties which might dispose of bonds *for less than their face value.*" (Underscoring ours.) Thus we find that the Act by its unambiguous terms, the evil the Act was intended to remedy, and the declaration of our highest court in construing it, establishes that the legislative intent was to make its provision apply only to sales below par, and therefore leaves in full force the general statute so far as relates to sales of bonds at a premium.

It follows that the Act approved October 6, 1920, *supra,* does not require advertisement of the proposed sale as a condition precedent to the authority of the Board of Revenue to make a sale above par, which I am advised was done in this case.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

Copy to Messrs. Storey, Thorndike, Palmer & Dodge, Boston, Mass.

April 3, 1923.

Hon. G. K. Fountain, Sheriff,
Brewton, Ala.

Dear Sir:

Replying to yours of the 5th ultimo, I find that you have made no distinction in your letter between warrants of arrest incorporating a "mittimus" and those which do not.

A "mittimus" is merely a warrant of commitment to prison.

27 Cyc. 810.

Some warrants of arrest, usually those issued by a Magistrate or Justice of the Peace, direct the officer to bring the prisoner before him; they do not direct that the prisoner shall be committed to jail, hence the Sheriff has no authority under such warrant of arrest to keep in custody the prisoner without a mittimus from the magistrate.

Other warrants of arrest, issued by a Judge of the Circuit Court or other officer authorized to issue warrants, direct the Sheriff to arrest the prisoner *and commit him to jail.* A warrant of arrest so directing the Sheriff is a mittimus.

When the prisoner has been convicted and sentenced, the order of the court from the bench acts as a mittimus and is sufficient authority to the Sheriff to keep the prisoner in custody.

State v. McFarland, 121 Ala. 45.

If an indictment has been found against the defendant, he can be held in custody by the Sheriff under the writ of arrest or a copy thereof.

Section 6290, Code 1907.

But if the defendant is in actual custody he shall be held by virtue of the indictment and no writ of arrest need be issued.

Section 6284, Code 1907.

The Act regulating the feeding of prisoners in County Jails provides that the Sheriff must furnish the State Auditor an item-

ized statement in detail verified by affidavit setting out, among other things, his "authority for committing" the prisoner.

Acts 1920, p. 28, Sec. 4.

The Sheriff must have *legal* custody of the prisoners in order to collect the bills for feeding them under that Act. If he has not been directed, in accordance with the above provisions, to commit or hold the prisoners, he hasn't legal custody and cannot collect for feeding them.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

April 9, 1923.

Hon. G. W. Hurst, Chairman,
Board of Education,
Chatom, Ala.

Dear Sir:

The Attorney General has referred to me your letter of the 5th inst. with reference to insuring school buildings in the county. Educational Code (Acts 1919, p. 588, Section 27) limits the duties of the trustees as follows:

> "To care for the property, to look after the general interest of the school and to make to the County Board of Education through the County Superintendent of Education from time to time reports of the progress and needs of the schools and of the will of the people in regard to the schools."

It therefore appears that the duties of the trustees of a school are in a general way limited to looking after the school property, grounds, etc., and making of reports and recommendations to the County Board of Education regarding the school.

Section 28 of said Act (Acts 1919, p. 588) provides as follows:

> "The County Board of Education is charged with the duty of seeing that every school building whose title is

vested in the State, County or School District is insured for its insurable value," etc.

I am of the opinion that it is the duty of the County Board of Education to make the contracts of insurance for school buildings and that it is not the duty of the trustees of the school and the duty could not properly be turned over by the Board of Education to the trustees.

There is no provision in the statutes of this State which inhibits a member of the board who happens to be in the insurance business from taking a contract of insurance on school buildings if such business should be tendered to him and the Board of Education would be violating no law in awarding insurance to a member of the board if it saw fit so to do.

Yours very truly,
LAMAR FIELD,
Assistant Attorney General.

April 10, 1923.

Mr. C. B. Smith,
Member State Tax Commission,
Capitol:

Dear Sir:

Your letter of March 5th addressed to the Hon. Harwell G. Davis, Attorney General, enclosing file on the Helvetia Milk Condensing Company, a foreign corporation, has been referred by him to me for reply.

You wish to know if capital employed in interstate commerce can be considered as part of capital employed in this State in estimating the amount of franchise tax to be paid by a foreign corporation doing business in this State, having duly qualified therefor otherwise.

For answer to the above proposition will say that the franchise tax on foreign corporations in Alabama is not a tax on property; it is a tax on the right to be a corporation and have corporate capacity in Alabama. The State has the right not to allow foreign corporations engaged in a private enterprise to qualify and do business in the State.

The State of Alabama has seen fit to place the franchise tax on foreign corporations doing business in this State at sixty cents on each $1,000.00 of capital employed by it in this State. It is utterly immaterial for what purpose such capital is employed. So long as a foreign corporation desires to do interstate business only, there is no need for qualifying as a corporation in this State; it can do such interstate business without such qualifying; but, as soon as it decides to do, in part, an intrastate business in Alabama, it must before doing so, qualify as provided by the statute and pay a franchise tax annually equal to sixty cents on each $1,000.00 employed in the State, no matter for what purpose employed.

The foregoing principle was clearly decided in the case of the Horn Silver Mining Company v. New York, 143 U. S. 305; 36 L. Ed. 164, affirming 105 N. Y. 76. This company was a Utah corporation and had a capital stock of ten million dollars and the franchise tax assessed thereon by the State of New York was thirty thousand dollars, which the corporation refused to pay. The statute of New York provided that every corporation, domestic and foreign, should be subject to a tax upon its corporate franchises or business, to be computed by a certain percentage of its capital stock, measured by the dividend on the par value of that stock, or when there were no dividends, or its dividends were less than a certain percentage upon the par value of the capital stock, then according to a certain percentage upon the actual value of the capital stock. The evidence showed that said company paid taxes both in Utah and in the State of Illinois, and that the greater part of the capital used in its business was out of the State of New York. It will be seen that here the State of New York required the payment of a franchise tax measured by a certain calculation with reference to its entire capital stock, although a greater part of the capital used in its business was out of the State of New York. The Court of Appeals of New York sustained the New York statute and required the tax to be paid. The case was appealed to the Supreme Court of the United States and the Supreme Court of the United States in its opinion handed down said:

> "The granting of the rights and privileges which constitute the franchises of a corporation being a matter resting

entirely within the control of the Legislature, to be exercised in its good pleasure, it may be accompanied with any such conditions as the Legislature may deem most suitable to the public interests and policy. It may impose as a condition of the grant, as well as, also, of its continued exercise, the payment of a specific sum to the State each year, or a portion of the profits or gross receipts of the corporation, and may prescribe such mode in which the sum shall be ascertained as may be convenient and just. There is no constitutional inhibition against the Legislature adopting any mode to arrive at the sum which it will exact as a condition of the creation of the corporation or of its continued existence. There can be, therefore, no possible objection to the validity of the tax prescribed by the statute of New York, so far as it relates to its own corporations. Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation—and all corporations in States other than the State of their creation are deemed to be foreign corporations—it can claim a right to do business in another State to any extent, only subject to the conditions imposed by its laws."

Applying the principle above enunciated to Alabama, and we see that one of the conditions imposed by its laws is that a foreign corporation, in order to enjoy the franchises of a corporation in Alabama, must pay annually, as a franchise tax, an amount equal to sixty cents on each thousand dollars of capital employed by it in Alabama, no matter for what purpose such capital is employed, whether in intrastate business, interstate business, or in importing or exporting, that is in trade between this State and some foreign country.

In the case of New York State v. Roberts, 171 U. S. 658, affirming 149 N. Y. 608, the United States Supreme Court said:

"Here no tax is sought to be imposed directly on imported articles or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture and some imported articles. From

the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested."

The foregoing would seem to be an extreme test of the principle where part of the capital employed in the State was invested in imported articles, not subject themselves to taxation by the State while held by the importer in original packages, still the capital invested therein may with other capital employed, form the basis of calculation of a franchise tax on a corporation for the right to be a corporation in the State and exercise its corporate franchise therein. Interstate business is no more under the control of the Federal Government than is international business—the business of importing and exporting.

In Alabama, the only question to be determined is whether or not in a particular case the capital is employed in Alabama. It is immaterial whether it is employed in intrastate business, interstate business or foreign commerce. If any part of the business is intrastate, so as to require qualification to do business in this State, then the annual franchise tax required by this State is an amount equal to sixty cents on all the capital employed in this State no matter for what purpose employed.

Yours truly,
A. A. EVANS,
Special Assistant Attorney General.

April 11, 1923.

Hon. D. S. Baker,
Judge of Probate,
Heflin, Ala.

Dear Sir:

Your letter of March 16, 1923, addressed to the Attorney General has been referred by him to me for reply.

You wish to know if a person, who is physically disabled to do manual labor and who obtains a certificate from the County Health Officer as to such disability, can peddle patent medicines without obtaining a license under Schedule 80 of the Revenue Act of 1919.

In answer to same will say that such person is exempt from the license required by Schedule 80 and can peddle anything comprehended under said schedule, in the manner stated therein, without a license.

The exemption, however, in our opinion, would not apply to Schedule 81. Should he sell medicine in the manner described in Schedule 81, he would have to take out license under said Schedule 81, notwithstanding his physical disability and certificate.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 14, 1923.

Mr. C. B. Smith,
Member State Tax Commission,
Capitol.
Dear Sir:

In Re: *Franchise Tax Mercantile Finance Corporation.*

Your letter of April 12, 1923, in regard to franchise tax, due by Mercantile Finance Corporation, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

As we understand the facts from the data of file, this corporation was incorporated in January of this year. At the time of incorporation there was subscribed $2,715.00 common stock and $136,750.00 preferred stock, making a total of $138,465.00, which represented the capital stock of the corporation as incorporated. Seventy-seven thousand three hundred twenty-five and 4-100 dollars were paid in and the rest subject to call.

If the foregoing is a correct statement of the facts then, in our opinion, the whole amount of $138,465.00 must be considered, for the purposes of a franchise tax, as paid up capital stock. In other words, we must construe "capital stock" and "paid up capital stock" as meaning the same thing in estimating franchise tax. The Constitution of Alabama, Section 229, provides that

"The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State, which shall be in proportion to the amount of the *capital stock,*" etc. The Legislature in carrying out this provision of the Constitution, Section 15 of the Revenue Act, 1919, provided that "every corporation organized under the laws of this State * * * shall pay annually to the State an annual franchise tax of sixty cents on each one thousand dollars of its *paid up capital stock.*

Prior to the adoption of the Constitution of Alabama, 1901, our Supreme Court had defined what constituted "capital stock." It held that the capital stock of a corporation consisted of that part which was paid in together with that part which is subject to call of Board of Directors. In other words that is what constitutes the capital upon which it is doing business and obtaining credit in the business world. So far as its legal status is concerned with reference to the business world, such capital stock is considered as paid up capital stock. The Legislature must have so understood the matter, as we cannot presume that it intentionally passed an Act in violation of the Constitution when its language is capable of such interpretation as will harmonize with the provisions of the Constitution.

It will be kept in mind that there is a substantial difference between subscribing for capital stock as an incorporator, paying the part necessary for incorporation, and leaving the balance subject to call of the Board of Directors, and in buying treasury stock, after the corporation is incorporated, on the installment plan. In the first case, the subscriber is incorporated, is a stockholder and is entitled to a certificate under Section 3469 of the Code, whether issued or not. He is entitled to mandamus to compel issuance, if the officers of the corporation should attempt to withhold it. In the second case, the purchaser would not be entitled to certificate until the stock is paid for. Nor does it become outstanding capital stock until paid for. The balance due is not subject to call of the Board of Directors, and should it not be paid for only damages for breach of contract could be awarded. Such stock, in our opinion, remains treasury stock until paid for, or until the conditions for passage of title have

been complied with and the purchaser becomes entitled to a certificate.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 16, 1923.

Mr. H. F. Lee,
Member Alabama Public Service Commission.
Capitol.

Dear Sir:

In accordance with my promise to you I have read and considered the copy of the order proposed by the Alabama Public Service Commission and also the Act approved October 1, 1920, upon which this order is based.

After careful consideration of the order and the Act, I am of the opinion that the order misinterprets the Act in this, that it seems to confuse the term "Utility" as used in the Act with the activities of the utility.

Under the terms of the Act, persons only are utilities. Persons may be either natural persons or artificial persons. Where a person, either natural or artificial, has power to and does engage in one or all of the activities mentioned under the heading "Utility" of Section 2 of said Act, such person is but one utility, though he or it may operate several of the activities named. To give the word "Utility" the meaning of a certain activity operated by the person would, in our opinion, make the construction of Sections 6, 7, 8, 9 and 12, such as to be impossible of performance. Aside from Section 2 under the heading "Utility," Sections 6, 7, 8, 9, and 12 of the Act approved October 1, 1920, clearly indicate that where the word "Utility" is used in the Act, it is speaking of the person, either natural or artificial, who is operating one or more of the activities mentioned in said Section 2, and not each of such activities operated by such person.

Since the word "Utility" must be so construed with reference to Sections 6, 7, 8, 9 and 12, we find no different meaning indicated in said Act with reference to inspection fees.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 18, 1923.

Mr. Harry K. Martin,
County Solicitor,
Dothan, Ala.

Dear Sir:

Your letter of April 10th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know whether or not an automobile dealer with an established place of business in Dothan, who has paid the State and County license in Houston County, can be compelled to pay a State and County license in any other town in Houston County or any other county, if such dealer sells cars in such town or county.

In answer to your inquiry will say that in our opinion Schedule 10 of Section 361 of the Revenue Act of 1919, as well as other schedules of said section, not otherwise excepted, must be construed in connection with Section 363 of said Act. Under said Section 363 a person is prohibited from doing business at more than one location under one license. Said section provides that "Such judge shall issue the license countersigned by him, in the form and on the blank to be furnished by the State Auditor, which shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same, if such location shall be in a city or town and have a street number, and, if not, then the location and amount paid for such license and the time for which it is issued * * * And such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor at *any other location than that therein specified.*"

In construing said Schedule 10 together with Section 363, we find that an automobile dealer has no right to do business at any other location than that named in his license, and, if he does establish such business at another location, he must take out a license for each business location. When he does business in a county other than the one in which he has his principal place of business, he must take out a license, but he must pay therefor

only one-half of the license required of such dealers in such county.

You speak of wholesale merchants, sellers of sewing machines and dealers in pianos, etc. If you will read carefully the schedule with reference to sellers of sewing machines, and the schedule with reference to dealers in pianos, you will see that each of these specifically provide for the extra privileges extended to them. As to wholesale merchants, we know of no license required of them for State or County, except wholesale lumber merchants, and they are subject to the provisions of said Section 363, since there is nothing said in the schedule with reference to them that would exempt them from its provisions.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

April 21, 1923.

Mr. A. B. Crutcher,
Tax Collector,
Athens, Ala.

Dear Sir:

Your letter of March 17th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if a Tax Collector is entitled to commissions on taxes collected by the Judge of Probate on redemption of lands which have been bought in by the State at tax sale, the land being subsequently assessed and the amount of such subsequent tax assessment placed upon the collector's abstract. This subsequent assessment is the one you refer to, as we understand your letter.

In answer will say that such subsequent assessment by the Tax Assessor is forbidden by Section 257 of the Revenue Act of 1919, except in the manner provided by Section 269 of said Revenue Act. You will see from a careful reading of this section that no duty is placed upon the Tax Collector with reference to the taxes on such lands. Said Section 269 requires the Tax Assessor to value such lands the first year after they are bought in by

the State, and to calculate the taxes upon such valuation, and to report same to the Auditor, who, in turn, reports such valuation and assessment to the Judge of Probate. The assessment thus placed becomes the annual assessment until redeemed or sold by the State. This is done for the purpose of informing the Auditor and the Judge of Probate of the amount that must be added in as taxes each year for redemption, after purchasing by the State and before redemption. The Tax Assessor should not put this assessment upon the abstract given the Tax Collector for collection, as such is forbidden by said Section 257. No duty with reference to the collection of such assessments is placed upon the Tax Collector. He has no authority to collect such taxes and, hence, could not be entitled to commissions thereon. Only the Judge of Probate can collect such taxes, by adding them in, on estimating the amount due for redemption.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 28, 1923.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of April 26th addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You state the following case:

> "A man is cited by the License Inspector, as a delinquent, to take out automobile license in this county. He went into another county and bought his license, will he be subject to prosecution in this county for failure to take out license as cited? Also can he be compelled to take out the license in this county regardless of the fact that he has bought license in another county?"

In reply to your inquiry will say: A person may take out an automobile license in any county he sees fit before he has

used his automobile. After he has used his automobile in a county and has been cited therein to take out a license, he cannot acquit himself of the duty to answer such citation and take out such license by going into another county and there taking out a license. The license so taken out is void.

Section 363 of the Revenue Act, 1919, provides as follows:

> "Before any person, firm or corporation shall engage in or carry on any business or do any act for which a license by law is required, he, they, or it, except as otherwise provided, shall pay to the Judge of Probate of the county in which it is proposed to engage in or carry on such business or do such act, the amount required for such license, and shall comply with all the other requirements of this Act; and upon the payment of such amount and a fee of fifty cents to the Probate Judge for the issuance of such license, and all costs and fees and penalties which shall have accrued, or for which such person, firm or corporation shall have become liable in any proceedings commenced for the collection of such license, or to enforce payment thereof, and upon compliance with all other provisions of this Act by the applicant, such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the State Auditor * * *."

When a person has been cited for a license he is not entitled to such license until he has paid, in addition to the price of the license, "all costs and fees and penalties which have accrued, or for which such person, firm or corporation shall have become liable in any proceeding commenced for the collection of such license or to enforce payment thereof." The issuance of a citation to a person due a license is the commencement of a proceeding against him for the collection of the license. For him to attempt to evade the law by going to another county, after being cited in a county where he has used his automobile, and getting a license there, is but a futile performance. Besides, if a person uses his automobile in a county, without having first taken out a license, he is subject to prosecution, even if he does afterward take out license. The practice has been not to insist upon such

prosecution where such person appears and takes out license upon citation; but taking out the license does not, as matter of law, exempt such person from prosecution.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

May 5, 1923.

Hon. A. E. Jackson,
Superintendent of Banks,
Montgomery, Ala.

Dear Sir:

The Attorney General's office is in receipt of your request for a written opinion regarding the amount of bank stock any bank is authorized to hold as defined in Section 29 of the Banking Laws of Alabama.

That part of said Section 29 authorizing a bank to subscribe for or own capital stock of any other bank is as follows:

> "No bank shall subscribe for or own exceeding ten per cent of the capital stock of any other bank, or invest or have invested an amount exceeding in the aggregate 25 per cent of its own paid in capital stock in the capital stock of any other bank or banks."

In the case of Commercial Fire Insurance Co. v. Board of Revenue of Montgomery County, 99 Ala., p. 1 Michie's Digest, Volume 3, page 460, Sec. 37, the Supreme Court, in defining the capital stock of a corporation, decided as follows:

> "Capital stock is the aggregate of money or other valuable thing contributed or paid into the common treasury, as a condition of the exercise of corporate functions, and a security for their faithful and prudent exercise."
>
> "Capital stock is the sum fixed by the corporate charter as the amount paid in, or to be paid in by the stockholders for the prosecution of the business of the corporation, and for the benefit of corporate creditors. The capital stock is

to be clearly distinguished from the amount of property possessed by the corporation. At common law the capital stock does not vary, but remains fixed, although the actual property of the corporation may fluctuate widely in value, or may be diminished by losses, or increased by gains."

"Words which have obtained a fixed and definite meaning at common law, in reference to a particular subject, are presumed to be used in a statute, relating to the same subject in their common law sense."

Ex parte Vincent, 26 Ala 145.
Mayfield's Dig., Vol. 4, p. 849.

It is my opinion that the proper construction to be given the phrase "capital stock" in said Section 29 is the same as contained in the decision of the Supreme Court in the case above cited, and that it does not include surplus, or assets of the corporation, other than its paid in capital stock.

Section 29 limits the subscription or ownership to not exceeding ten per cent of the capital stock of any particular bank, while the other limitation contained in said section is confined to, and permits ownership of, not exceeding 25 per cent of its own capital stock in the capital stock of any other bank or banks, the other remaining 25 per cent to be used and invested otherwise than in capital stock of banks.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 5, 1923.

Mr. Paul Mozley,
Assistant Clerk,
Convict Department,
Capitol.

My dear Sir:

You ask this office for an opinion construing the Indeterminate Sentence Law in conjunction with Section 6519 of the Criminal Code of 1907, as bearing on convicts sentenced in two or more cases.

You seem to be under the impression that the instructions heretofore given you by Mrs. Osgoode on this subject are inconsistent with the practice of the Board of Pardons in paroling such convicts at this time.

The instructions given you by Mrs. Osgoode were binding on the Convict Department, but not on the Board of Pardons.

The Convict Department has no authority to discharge a convict until the expiration of his total maximum sentences. And unless the Board of Pardons issues an order for the convict's parole, it would be necessary that your office figuré the beginning of the second sentence at the expiration of the first maximum, else you would discharge a convict before his terms were up.

The Board of Pardons, however, has the power and authority to parole such convict at the expiration of his first minimum, but under Section 6519, Code of 1907, his second sentence begins immediately.

It will be noted that Section 6519 reads as follows:

> "When a convict is sentenced to imprisonment in the penitentiary on two or more covictions, the imprisonment on the second and on each subsequent conviction, must commence at the expiration of the *imprisonment* on the preceding conviction."

This section does not read at the expiration of the *sentence* on the preceding conviction, but "at the expiration of the *imprisonment* on the preceding conviction."

Hence the Board of Pardons having the power to parole a convict at the expiration of his first minimum, and Section 6519 of the Code making the second sentence commence as soon as the convict is paroled on the first, the Board has the power to parole the convict at the expiration of his total minimums.

The Board of Pardons, desiring to give every convict the benefit of the spirit and purpose of the Indeterminate Sentence Law, requests that a record of each convict having two or more sentences be furnished the Board at the expiration of each minimum, figured according to the above opinion.

Yours very truly,

EDWINA FALKNER,

Assistant Attorney General

Secretary Board of Pardons.

May 5, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your request of the Hon. Harwell G. Davis, Attorney General, for an opinion in regard to collection of costs in the case of Gulf States Steel Company v. George Wood and similar cases, has been referred by him to me for reply.

From the data furnished with reference to said case, I find the following to be the substantial facts:

On the 20th day of January, 1920, the Gulf States Steel Corporation brought suit in unlawful detainer against George Wood before J. M. Lawler, a Justice of the Peace in Jefferson County. On January 30th, 1920, the said Justice of the Peace rendered judgment in favor of the plaintiff, requiring a restoration of the property unlawfully detained, for eighteen dollars damages for detainer, and costs of the proceeding. Appeal was duly taken by defendant from this judgment, as provided by law, to the Circuit Court of Jefferson County, the defendant giving bond as required by law, with Fidelity and Deposit Company of Maryland as surety. The transcript of this docket was certified to the said Circuit Court including the bill of costs in the Justice of Peace Court, and all the papers pertaining to said cause were sent up to said Circuit Court—all as provided by law.

The case was duly docketed on the Civil Trial Docket as follows:

Attorneys: Percy, Benners & Burr, Frank S. White & Sons.

Parties: United States Steel Co., a Corporation, v. George Wood.

Action: Unlawful Detainer. Appealed from J. M. Lawler, J. P. Surety, Fidelity & Deposit Co., of Maryland. Amount, $100.00.

Orders of Court: July 24, 20, Judgment by consent for plaintiff for property sued for and all costs.

The cost in the Justice of Peace Court was $4.85; in the Circuit Court, $9.50. Of said costs, the $4.85 in the Justice Court was created by plaintiff; in the Circuit Court $1.65 was created by plaintiff and $7.85 was created by defendant; the bond executed by defendant on appeal from the Justice Court to the Circuit Court which was sent up to the Circuit Court with the other papers, was in the amount of $200.00; no damages were assessed and the surety on the appeal bond was perfectly solvent.

With the entries upon the trial docket made by the court and with the appeal bond in his hands, the clerk of the Circuit Court made the following minute entry of judgment:

"*Number of Case* 14715.

"Gulf States Steel Company v. George Wood.

Present and presiding, John C. Pugh, Judge of Circuit Court.

"On this the 24th day of July, 1920, come the parties by their attorneys and agree in open court that a judgment be now entered for the plaintiff and against said defendant for the property sued for, to-wit: House No. 6 and premises on which house is located, besides costs, and move for an order accordingly, whereupon,

"It is ordered and adjudged by the court that the plaintiff have and recover of the defendant the property sued for, to-wit: House No. 6 and premises on which house is located for which let writ of possession and *fi fa* issue."

No minute entry of judgment against the surety on the appeal bond was made by the clerk as required by Section 4282 of the Code, 1907. The clerk of the Circuit Court of Jefferson County was and is paid a salary by the county and the fees earned by him belong to the county. Execution was issued against the defendant for costs and returned no property found. Thereupon plaintiff paid the costs created by it. There remained unpaid as costs created in the Circuit Court by defendant the following:

Clerk's fees, which belonged to the county	$3.55
State trial tax fee belonging to State	3.00
Constable's fee, belonging to the Constable	.75
Library tax fee for Circuit Court Library	2.00

By the failure of the clerk to make the proper minute entry, as required by law, the several items of costs were lost to those entitled thereto.

Making proper minute entry of judgments rendered in the Circuit Court is a ministerial duty of the clerk of the Circuit Court. Subdivision 8 of Section 3272, Code 1907. It is well known that it is the universal practice in this State for the clerk to make the minute entry of judgments from the bench notes entered upon the trial docket. The bench notes in this case, when construed in connection with the requirements of Section 4282 of the Code of 1907, required the clerk to make the minute entry of judgment for costs against the surety upon the appeal bond, as well as against the defendant, the amount of the judgment, in every respect, being well within the amount of the bond. Lockwood, et al., v. Thompson & Buchmann, 198 Ala. 295 et seq. The failure of said clerk with reference to discharging his duty in making the proper minute entry of judgment against the surety on the appeal bond has resulted in damage to Jefferson County, to the State of Alabama, to the Constable and to the Circuit Court. The clerk and his bond are liable for such damages. Eslava v. Jones, 83 Ala. 140. In accounting with such clerk these fees should be charged to him. He probably could get the court to amend the judgment nunc pro tunc and have the fees collected from the surety of the appeal bond. All the opinions of our Supreme Court indicate that such an amendment nunc pro tunc can be made where the amount of the judgment is within the amount of the appeal bond.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

May 7, 1923.

Messrs. Avery and Malcomb,
Assistant Examiners of Accts.,
Capitol.

Dear Sirs:

Your letter of February 22, 1923, addressed to Hon. Harwell G. Davis, Attorney General, requesting an opinion on certain matters therein stated, has been referred by him to me for reply.

You wish to know:

First, is there a specified limit of time, after the elapse of ten days from date of rendering judgment in the Circuit Court, when the court continues in session three weeks or more, in which the clerk must issue execution, in order that he will not be held liable for failure to issue such execution within such period?

Second, in the event that all costs and fees cannot be collected from the losing party, or the one against whom such judgment or decree is rendered for such costs and fees, is it the clerk's duty, and is he required to issue execution against the party at whose instance such costs and fees were incurred, execution having been issued against the losing party? If it is the clerk's duty to issue execution against the one at whose instance the costs and fees were incurred, and if execution is issued at this time, will it relieve the clerk of further liability, or is there a time limit in which such executions must issue, after execution against the losing party has been issued and returned by the Sheriff "no property found?" You further ask does the word "may" as used in Section 4090 of the Code, 1907, leave it optional with the clerk as to issuing execution against plaintiff?

In answer to the first proposition will say that the issuance of execution by the clerk is a ministerial duty. The time within which execution must issue is prescribed by statute. Section 4080 of the Code, 1907, as amended by Acts 1915—Acts 1915, page 270—requires that where the court continues in session three or more weeks, the clerk must issue execution after ten days from the rendition of judgment.

Section 4079 of the Code, 1907, as amended by Act 1915 (Acts 1915, page 270) is as follows:

"The clerk must issue execution on all judgments in favor of the successful parties as soon after the time prescribed for the issuance of said executions by law as is practicable, unless otherwise directed. The writ must be signed by the clerk and tested on the day it is issued."

It will be seen that said Section 4079 requires the clerk to issue execution as soon after the time prescribed as practicable, while said Section 4080 requires the clerk to issue execution, where the term of court continues for three weeks or more, after ten days. Construing those two sections together we readily see that the clerk is required to issue execution in such a case as soon after the expiration of ten days from date of judgment as practicable. This is made his duty. Neglect to perform this duty renders the clerk liable to any one injured by such neglect. Eslava v. Jones, 83 Ala. 139. The failure to issue execution as required by law is a breach of his bond. The clerk of the court is charged with the duty of issuing the original execution without request from the successful party. To obtain an alias or pluries the clerk must be requested by the successful party to do so. Steele et als. v. Thompson, Ad'mr 62 Ala. 327. If by reason of the clerk's failure to issue execution as required by the statute, the State, county or other person has failed to collect costs, the clerk of the court and his bond is liable for such damage.

In answer to the second proposition will say that where the plaintiff is the unsuccessful party and judgment for cost is adjudged against him, no execution can be issued against the defendant for the costs created by him; but when the defendant is the unsuccessful party and execution is issued against him and returned "no property found," Section 4090 of the Code provides that "execution may issue against the plaintiff, in the name of the clerk of the court, for all the costs created by him in obtaining his judgment."

If the costs, or part of the costs, created by the plaintiff in obtaining his judgment, belongs when collected to some one other than the clerk, the clerk has no discretion in the matter of issuing execution against plaintiff; "may" in such a case means must. "Such words, when used in a statute, are regarded as peremptory, when the public, or an individual, has a right *de jure* that

the powers conferred should be exercised. Ex parte Banks, 28 Ala. 35. Such execution should be issued as soon as practicable after the return is made by the Sheriff "no property found" on the execution issued against the defendant. Loss occasioned by the failure to issue such execution against plaintiff is chargeable against the clerk and his bond.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

May 8, 1923.

Mr. W. J. Ballard,
Sheriff of Randolph County,
Wedowee, Ala.

Dear Sir:

The Attorney General's Office is in receipt of your letter of recent date in which you make request for an opinion as to whether or not the Sheriff of Randolph County, for making an arrest in a felony case in the County Court, is entitled to a fee of $4.00, the same as in the Circuit Court.

Section 6638 of the Code of 1907, as amended by Acts of 1911, page 41, provides as follows:

> "For executing warrant or writ of arrest in felony cases, $4.00."

Section 6655 of the Code of 1907 as amended by Acts of 1915, page 862, Section 9, provides as follows:

> "For serving warrant of arrest when bail is given, $1.00. For serving warrant of arrest when bail is not given, and carrying defendant to court or to jail, $2.00."

This question has been definitely settled by the Supreme Court decision in the case of McFountain v. State, ex rel. Russell, Sheriff, 203 Ala. 329, 83 So. 53, in which it is held as follows:

"Acts 1911, p. 41, in no wise amends or repeals Section 6655 of the Code. It is directed to Section 6638, and does not specifically deal with County Court fees as fixed by said Section 6655."

Therefore your docket is erroneous as to said fee in the County Court.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 8, 1923.

Mr. J. W. Stewart,
Sheriff of Clay County,
Ashland, Ala.

My dear Sir:

Your letter requesting an opinion from the Attorney General's Office in regard to the duties of the Sheriff of Clay County as to public roads under Section 3722 of the Civil Code of 1907, has been referred to me.

Section 3722 of the Code of 1907 was amended by Acts of the Legislature of 1919, page 4, but as amended is without practical change as to the compensation allowed the Sheriff for road duties.

You will observe from the decision of the Supreme Court in the case of Macon County v. Abercrombie, et al., 63 So. Rep. 985, that the court defines what are "ex-officio services," also suggests that the Probate Judge and Sheriff are required to perform extra duties *in lieu of a public road superintendent or supervisor.*

The Legislature in 1915 (page 623) repealed Sections 5769 to 5838 inclusive (as amended) and Sections 5839 to 5843, inclusive, together with certain other sections in the criminal code. (See said Act).

Some of the duties as to public roads required to be performed by the Sheriff for which he was allowed compensation for ex-officio services were mentioned in said repealed sections.

The same Legislature (Acts 1915, page 573) enacted the Goode Act. The Legislature by said Act delegated to the Court of County Commissioners and Boards of Revenue of the several counties of the State the power to legislate in the matter of establishing, constructing, using, working and maintaining the public roads, bridges and ferries.

This Act was inapplicable to Clay County, as a local road law was then in force and Section 3 of said Act excepted the Goode Act from operation in conflict with a local law applicable to the county.

Also see Stone, County Treas. v. State, ex rel. Jett-Muths Const. Co., 204 Ala. 13.

The local road laws of Clay County were repealed by the Legislature in 1919, effective October 31, 1919. (Acts 1919, pp. 97 and 203). On repeal of the local road law of Clay County, the provisions of the Goode Act applied to said county.

Smith v. Hoyt, 14 Wis. 252, Acts of 1919 (Ala.) 844.

It is my opinion that the Goode Act with its amendments are applicable to Clay County. This Act provides that the Court of County Commissioners may adopt rules and regulations in the matter of establishing, constructing, using, working and maintaining the roads, bridges and ferries, and the validity of the Goode Act has been upheld by the Court of Appeals and the Supreme Court.

Windham v. State, 77 So. Rep. 963.
Mills v. Court of County Com. of Conecuh County, 204 Ala. 40.
Hill v. Moody 207 Ala. 325.

Therefore, your duties as to public roads in your county are defined by Section 5870 of the Code of 1907, subdivisions 1 and 4 and you would be governed largely by such rules and regulations as have been or may be adopted by the Court of County Commissioners of your county.

This is as far as this office can extend its written opinion in answer to your inquiries in your letter under the Acts of the Legislature approved February 10, 1923.

It is my opinion that services performed by the Sheriff in executing warrants for failure to obey the rules and regulations adopted by the Court of County Commissioners are not properly classed as duties for which he is allowed a sum of not exceeding ninety dollars ($90.00) under the Acts of 1919, page 4, but said services are properly classed as arrests for other law violations. As to compensation for same, see Section 6889 of the Code of 1907.

Hoping the above will be of sufficient guidance to you in the discharge of the duties you mention, I am

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 8, 1923.

Hon. B. G. Wilson, Solicitor,
14th Judicial Circuit,
Jasper, Ala.

Dear Sir:

Your recent request to the Attorney General for an opinion as to whether there is any legal liability for failure of the Sheriff to keep the ration sheet for food furnished prisoners has been referred to me for an opinion.

In your correspondence as sent to this office is mentioned the decision of the Court of Appeals in the case of State ex rel. Chandler v. Lee, State Auditor, 90 So. Rep. p. 337.

It is true the Court of Appeals did not attempt to decide what could result from a failure of the Sheriff to keep the ration sheet, yet, in said decision is found a very significant clause as follows:

> "We would not be understood as even intimating that the State Prison Inspector has no right to make and promulgate rules and regulations, not inconsistent with law, for feeding, preparation, and character of the food for all prisoners. Such right is clearly given him."

"It is made a misdemeanor under this Act for any member of the Court of County Commissioners, or Boards of Revenue, Sheriff or deputy, who violates any of the provisions of this Act for which no special penalty is provided, and in addition Section 7474 of the Code provides: 'Any Sheriff who knowingly receives from the State for feeding a prisoner or prisoners any sum of money to which he is not lawfully entitled must, on conviction, be punished as if he had stolen it.' "

The Legislature can delegate to boards the power to establish, promulgate and enforce rules and regulations with reference to infectious diseases, public roads, etc.

Reims v. State, 82 So. 576.
Horn v. State, 84 So. 883.

A violation of such reasonable rule or regulation will support a criminal prosecution.

Curlee v. State, 75 So. 268.
Windham v. State, 77 So. 963.
See authorities cited in this last named case. 79 So. 877.
Oliver v. State, 79 So. 313.

In addition, I take pleasure in enclosing you herewith opinions of Judge James J. Mayfield, Assistant Attorney General, dated January 24, 1922. Also opinion of Hon. Marion Rushton, Assistant Attorney General, dated September 3, 1921, which deal with the question of the liability of the Sheriff for failure to perform his duties prescribed by law.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 9, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The following question has been submitted to this office, to-wit:

> "Should the funds received by a county from the gasoline license tax levied by the Act approved February 10, 1923, be applied to the payment of warrants which were outstanding against the road and bridge fund of the county at the time of the approval of the law?"

Section 8 of this Act contains, so far as applicable to this question, the following provisions:

> "The State Auditor shall at the end of each month after the said funds are so certified to him draw his warrant upon the State Treasurer payable to the County Treasurer or the County Depository of each of the several counties for the several amounts so due each county; and each of the County Treasurers or County Depositories of the several counties so receiving such warrants shall *place such warrants or the proceeds thereof to the credit of the road and bridge fund of the particular county. And such fund so placed to the credit of the road and bridge fund in each county shall be used for the construction and maintenance of the public highways and bridges in such counties and for no other purpose.*" General Laws First Session 1923, p. 36. (Italics supplied).

By reference to the underscored provisions quoted, it will be noted that after requiring the funds to be placed "to the credit of the road and bridge fund," which requirement was sufficient without any other provision to compel the devotion of the fund to building, maintaining roads and payment of claims already created against that fund, an extra provision was added limiting the use of these funds to be used "for the construction and main-

tenance of the public highways and bridges—and *for no other purpose.*" The only construction that will give this latter clause a field of operation and prevent it from being mere surplusage is to interpret it to limit the use of such funds to future improvements and maintenance and to prohibit such funds being used to pay warrants which were outstanding against the road and bridge fund at the time of the approval of the Act.

It is therefore my opinion that the moneys received by the counties from the gasoline tax cannot be used to pay warrants outstanding against the road and bridge fund at the time of the approval of the Act.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 9, 1923.

Mr. Henry J. Miller, Clerk,
Circuit Court of Marshall County,
Guntersville, Ala.

Dear Sir:

Your letter to the Attorney General in which you request an opinion has been referred to me for a compliance therewith.

You ask for an opinion as to whether the clerk of the Circuit Court, as ex-officio clerk of the County Court, by virtue as such under Acts of 1919, page 200, is required to make a final record of the papers filed in the County Court, and charge for the same.

Section 6698 of the Code of 1907 provided that "The Judges of the County Courts are the clerks of their respective courts."

This section was repealed by the above mentioned Act, and the clerk of the Circuit Court was given said duties, for which services Section 3 provides compensation as follows:

> "That the fees and compensation of said clerks for their duties as clerks of the County Court, shall be the same as now allowed by law to the clerks of the Circuit Court in criminal cases, and shall be paid in like manner."

By Section 3272 (Code of 1907) subdivision 9, the clerk of the Circuit Court is required "To record in well-bound books, within six months after the final determination of any suit or prosecution, all the proceedings relating thereto, not previously recorded under Section 5736 (2644) except the subpoenas, affidavits for continuance, commissions to take testimony, evidence and executions."

For this service, in criminal cases, as well as in civil cases, he is entitled to receive, for each hundred words, 15c. Section 6635, Code 1907.

By no provision of the law do I find that the Judge of Probate, as ex-officio judge of the County Court, was allowed a compensation for making a final record of criminal proceedings in the County Court, nor required to make the same. See Section 6655, also Chapter 198, Article 3, Code of 1907.

No fee must be taken but in cases expressly provided by law. Code 1907, Section 6631, and Citations.

For the reasons given it is my opinion that you would not be permitted to charge for making, and that it is unnecessary to make, a final record of a criminal prosecution in the County Court.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 14, 1923.

Hon. W. S. Keller,
State Highway Engineer,
Montgomery, Ala.

Dear Sir:

Your letter of the 11th inst. states that Sections 58 and 59 of the road specifications which are made a part of the agreements entered into between the State Highway Commission and those contracting to construct roads, provide that partial payments made to such contractors during the execution of the work shall not exceed 85 per cent of the relative value of the work done as estimated by the engineer of your department. Your letter requests to be advised whether you would be allowed with

the consent of the surety of the contractor to pay the contractor a larger percentage than specified in said sections.

These sections of your specifications, though in different words, are to all intents and purposes the same as the statutory requirement which provides as follows:

> "The State Highway Engineer may authorize partial payments to the contractor performing any road or bridge work as the work may progress. The progress estimates and payments shall be based upon materials placed and labor expended upon the work, but not more than 85 per cent of the contract price of the work shall be paid in advance of the full completion and acceptance of the work. At least 15 per cent of the full contract price of any work shall be withheld until the work is satisfactorily completed and accepted by the State Highway Engineer." Gen. and Local Laws of Alabama, Special Session, 1921, Section 14, page 61.

It will be noted that this provision requires at least 15 per cent of the contract price of said work to be withheld until the work is satisfactorily completed and accepted by the State Highway Engineer. I am of the opinion that this limits payments in advance of the full completion and acceptance of the work to 85 percentum of the contract value of the actual work done and materials used, otherwise the evident and unmistakable purpose of the statute could be easily defeated.

As the Legislature alone has the power to change this provision, it follows that no part of the 15 per cent of the value according to the contract price of the work done can be paid by you to the contractor even though it be agreeable to the surety of the contractor.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 14, 1923.

Hon. J. M. Moore, Commissioner,
Dept. of Agriculture and Industries,
Capitol.

Dear Sir:

Your letter requesting to be advised whether there was any law in Alabama protecting the public against false advertising and what proceedings are necessary to prevent such advertising has been received.

The Act approved September 1, 1915, (Acts 1915, p. 339) makes it a misdemeanor for any person with intent to sell any merchandise to the public to knowingly publish an advertisement relative to such merchandise which is untrue and misleading. This statute has for its purpose the preventing of defrauding of the public by inducing the purchase of articles through false or misleading statements contained in advertisements. It is similar to the statute against false pretenses. Parison Co. v. Williams, 203 Ala. 378; 83 So. 122.

It will be noted that the untruth or misleading nature of the advertisement must be known to the person who utters the advertisement to make him guilty of the violation of the criminal provisions of this act. This knowledge is a question of fact to be inferred from the evidence by the jury. Smith v. State, 55 Ala. 1. The jury would have a right to presume that a person, making a positive declaration, in an advertisement as to the existence of a fact, knew whether or not such declaration was true or false. If it was shown that a false statement as to a fact was made, it would be necessary for the person making such false statement to show that he was ignorant as to the fact and that such ignorance was honest and real and not superinduced by his own fault or negligence. Gordon v. State, 52 Ala. 308.

> "No man can be acquitted of responsibility for a wrongful act unless he employs the means at command to inform himself. In employing such means, though he may be mistaken, he must bear the consequences of his negligence." Dotson v. State, 62 Ala. 141.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 16, 1923.

Marengo County Bank,
Depository Marengo County,
Linden, Ala.

Dear Sir:

The Attorney General is in receipt of your written request for an opinion, as to your duties, under the law, as depository of the funds of Marengo County, under your statement of facts, as follows:

Linden, Ala., April 23, 1923.

Hon. Harwell G. Davis,
Attorney General of Alabama,
Montgomery, Ala.

Dear Sir:

Availing ourselves of the privilege of calling on you for official opinion as to matters pertaining to the duties of a County Depository, we beg to ask that you advise us as to our duties, under the law, upon the following statement of facts:

1st. The County of Marengo has outstanding, say, $125,000 of county warrants, issued largely for roads and bridges and tick eradication, from 1919 down to 1922, the validity of which is undisputed, and which were duly registered soon after their issuance.

2nd. There is on hand, in the depository, to the credit of the general fund of the county, approximately $30,000. But practically all of the county taxes for 1923 have been collected, and the revenue from all sources to the said general fund, from now on until the beginning of the tax year, October 1st, 1923, will be nominal.

3rd. Estimating the "current governmental expenses" of the county from now to October 1st, 1923, and basing same on the same for 1922 and 1921, all the money on hand will be required to pay such governmental expenses up to October 1st, 1923. Of course, the same is an estimate, only, as the same cannot be determined with accuracy, and many unforseen events may vary the same, such as special terms of

courts, loss of bridges by floods, etc., and other matters of a similar character.

Taking the above statement to be correct as to FACTS, then should the County Depository pay out the amount now on hand, on the old warrants, leaving nothing for current expenses of the county, or should it pay the current governmental expenses from the funds on hand, up to October 1st, 1923, and then apply any balance *then on hand,* promptly, to the old warrants?

In this connection we would call your attention to the recent case of Marengo County Bank v. Rhodes, and with which we are endeavoring to comply, according to our understanding of the decision, and as the latest expression from the Supreme Court on the matter.

Your prompt attention will be greatly appreciated.

Very respectfully,

(Signed) MARENGO COUNTY BANK,

County Depository.

Ordinarily, the Commissioners Court, in its fiscal management of the county affairs, would decide much of the foregoing query. However, there are certain duties performed by the depository in the "safekeeping and paying out" of the county funds, which might conflict with the desires of the Court of County Commissioners. Yet, the law establishes and defines the duty of each.

The duties of the County Treasurer are specifically set forth in Section 211, Code of 1907. Section 211, subdivisions 1 and 2, as amended by Acts 1919, page 860, reads as follows:

"It is the duty of the County Treasurer, 1. To receive and keep the money of the county and disburse the same as below stated. 2. To pay out of the general fund of the county, on presentation, and without being audited and allowed by the Court of County Commissioners, all grand and petit juror certificates, and to pay all other claims against the general funds that have to be allowed and audited only after they have been audited and allowed, and a warrant has issued therefor; but only to the extent

so allowed, any warrant to the contrary notwithstanding, and in making payments from said fund he shall observe the order of preference as prescribed by Section 153 of this Code." (This amendment was approved September 29, 1919).

The other duties of the County Treasurer are fully set forth in the remaining subdivisions of said Section 211.

Preferred claims against the general funds, as prescribed by Section 153 of the Code of 1907, as amended by Acts of 1919, page 1110 are as follows:

"The claims of grand and petit jurors as shown by the certificates issued to them.

"The compensation of members of the Court of County Commissioners as shown by the certificates issued to them.

"Premiums for fire insurance on the public buildings of the county.

"The compensation of the Probate Judge, the Sheriff, Tax Assessor, and the Clerk of the Circuit Court, and Jury Commissioners, and Deputy Solicitors for any service performed by them for the county, which may be required of them by law, including fees commonly known as ex-officio fees, and any salaries authorized by law to be paid for any special work or serice rendered by the Probate Judge, Sheriff, Tax Assessor or Clerk of the Circuit Court, and Deputy Solicitors as shown by the certificates issued to them;

"And the accounts for necessary stationery furnished the county, are to be next preferred in payment to all other claims, except special appropriations for the County Jail provided for under Sections 140 and 142, which have priority of all other claims;

"And for the payment thereof it is the duty of the County Treasurer to set apart a sufficient fund from the moneys of the county.

"Claims for the support of the poor are to be next preferred.

"And thereafter a claim for the use of a building for a courthouse, the county not having a suitable building, is to be preferred;

"And thereafter the claim of the Secretary of State for certified copies of field notes is to be preferred."

In my opinion the preferment and order of payment applies to claims arising after the adoption of the Act (Code Section 153 governing prior claims), and the treasurer should set apart a sufficient fund from the general funds of the county to meet the preferred claims.

The decision of the court in the case of Allen v. Watts, 88 Ala. 497, which was a suit on the treasurer's official bond, for an alleged breach, by failure to pay certain jurors and bailiff's certificates, which had been issued in 1886, was as follows:

"The sufficiency of the second defense, to the effect that there were no funds in the treasury, which could be legally applied in satisfaction of these certificates, must therefore be determined by reference to the law then of force which was the Code of 1886, and not by the statute in effect at the time the claim accrued. Section 908 of the Code of 1886 makes the claims of jurors and commissioners for compensation, and the accounts for necessary stationery furnished the county, preferred claims, and requires the County Treasurer 'to set apart a sufficient fund from the moneys of the county for the payment.'

"The language of the present statute is slightly different from that employed in previous Acts and codifications, but, we apprehend, the meaning is the same; and that the purpose of this as well as all former laws on the subject, was to assure a fund to pay such current expenses of the body politic as were essential to its very existence, and the continued discharge of the functions for the performance of which it was created. It is clear on the one hand, that the purposes of this statute would not be met by a construction which would admit of the payment, out of the fund thus set apart, of claims, even of the classes mentioned, which had accrued for services already rendered, and, on the other, that to hold it to be the duty of the treasurer to pay other claims out of this fund would be to emasculate the law of all meaning and effect.

"But it urged that this interpretation would put it in the power of the treasurer to defeat all claims not of the preferred classes, for which he is thus to provide, by simply setting aside the whole fund in his hands for this purpose. As sufficient answer to this position—leaving out of view any other remedy the claimant may have—is that he is only authorized to set apart a sufficient sum to meet these expenditures; and if he should, in good faith or otherwise, thus appropriate more than was necessary to fulfill the statutory purpose, he could not defend against a suit for refusing to pay other claims, on the ground of such appropriation, though even in that case, it would seem he ought to be let in to reduce the recovery, and confine it to the amount in his hands in excess of the sum really necessary to pay the preferred claim."

The office of County Treasurer was abolished by Acts of 1915, page 348, and a depository for the county funds has been selected by the Court of County Commissioners in your county, and the following provisions of said Act affect the duties, as contained in Section 214 and amendments as above set forth, of the depository in your county as follows:

1. All settlements heretofore required by law to be made with said treasurer shall be made with said Board of Revenue or Court of County Commissioners. *Sec.* 3.

2. All sworn reports heretofore required by law to be made by said treasurer shall be made by such Board of Revenue or Court of County Commissioners. *Sec.* 3.

3. Accounts shall be opened and kept in said bank in such manner and funds as such board may direct, disbursements to be made upon the order of the Board of Revenue or Court of County Commissioners. *Sec.* 4.

4. Said bank shall furnish said board with a full and detailed statement of the receipts and disbursements on the second Monday of January and July in each and every year. *Sec.* 4.

5. The depository shall be charged with all the duties and subject to the same liabilities insofar as the safekeeping

and paying out of the funds of the several counties are concerned, as are now imposed by law upon County Treasurers.

6. In all counties under 50,000 population where County Treasurer is now required by law to collect and receipt for duty in such county, the Judge of Probate in such county shall be charged with the duty of collecting and receipting for such road tax and perform such other duties in connection therewith as are now required by law of County Treasurer. *Sec.* 5.

7. All warrants drawn upon the depository must be signed by the Probate Judge of said county or the president of the Board of Revenue or Court of County Commissioners of the different counties at the election of such Board of Revenue or Court of County Commissioners, expressed in a resolution which must be spread upon the minutes and given to such depositories. *Sec.* 5.

8. Such officer signing such warrants to be liable for the amount of any warrant drawn and paid by such depositories without the authority of law. *Sec.* 5.

9. All acts required by law to be performed by the County Treasurer, outside of the receipts and disbursements of the county funds, shall be performed by the president of the Board of Revenue, or Court of County Commissioners of the county. *Sec.* 6.

The depository of the county is a contractee, whose duties have been limited as above set forth, and who "shall be charged with all the duties and subject to the same liabilities insofar as the safekeeping and paying out of the funds of the several counties are concerned, as are now imposed by law upon County Treasurers."

The Supreme Court in its decision in the case of Underwood Typewriter Co. v. Marengo County Bank, 82 South. 158; 203 Ala. 129, has decided the following points:

1. The County Depository is not a public county officer—is a contractee only—and the summary remedy afforded by Code Sections 58, 99, 5900 or 5988, cannot be invoked under present enactments.

3. The phrase "the safekeeping and paying out of the funds" as found in Section 5 providing County Depositories, indicates an intent to go no further than to impose upon the depositories duties and liabilities to those ends.

While a depository is not a public officer, in the common acceptance of that term, a depository is a contractee with positive law-imposed, ministerial duties, performance of which may be compelled in proper cases by the writ of mandamus.

First Natl Bank of Abbeville v. Terry Briggs & Co., 203 Ala. 401; 83 So. 170.
Rhodes v. Marengo County Bank, 88 So. 850.

In the case of Hasty, County Judge, v. Marengo County Bank, 89 So. 433, 206 Ala. 280, the Supreme Court in construing General Acts of 1915, p. 348, abolishing the office of County Treasurer and providing for the deposit of county funds in banks designated as depositories, says:

"While such a depository is not a public officer, as hereinbefore noted, yet it is subject to all the duties and liabilities of a County Treasurer, as previously prescribed by law."

Acts of 1919, page 722, authorizing governing bodies of counties to adopt a budget system for the conduct of the affairs of the county, and to this end to appropriate from the County Treasury sufficient funds to pay actual expenses of the county as shown by the budget so adopted, was approved September 25, 1919.

The Supreme Court in Rhodes v. Marengo County Bank, 88 So. 850, decided May 12, 1921, in deciding what effect the Act of 1919, page 722, authorizing the governing bodies of counties to adopt the "Budget System" for the conduct of county affairs, had upon the then exisiting law of the State, said as follows:

"With or without this declaration of legislative purpose (referring to declaration in Section 1, granting authority to

adopt a "budget system" for the conduct of county affairs, and appropriations from the County Treasury of "sufficient funds to pay the actual expenses as shown by the budget so adopted) it was competent for Commissioners' Courts and Boards of Revenue, if necessary or expedient in the exercise of that part of the sovereign legislative and administrative power of the State previously committed to them, to adopt the "budget system," and to apply the whole revenues in each year to current governmental county expenses, leaving nothing to be applied in payment of old debts. White v. Decatur, 119 Ala. 476; 23 So. 999.

Section 3 appears to be but another declaration in part of the existing law; but it provides that passed and allowed claims "shall be paid as soon as the condition of the County Treasury shall warrant their payment out of any funds available for such purpose and not actually necessary for the current expenses of the county as shown by said budget."

True the Act postpones the payment of previously passed and allowed claims to current expenses, "as shown by said budget," but the claims thus preferred are, in effect, defined by the section as claims arising out of the actually necessary conduct and operation of county affairs during the current year. On the one hand we do not see that anything is accomplished by the Act; on the other we see on its face no tenable objection to its validity.

"To the duties and obligations of the County Treasurer the County Depository, appellee has succeeded. The provisions of the statute affecting the means and order of payment became a part of the contract between the parties.

Commissioners Court v. Rather, 48 Ala. 433.

"The obligation of the contract, including the remedy for its enforcement, could not be impaired by statute, and such being the case, its obligation could not be impaired by the county authorities (Board of Revenue v. Farson, 197 Ala. 375, 72 So. 613) exercising only such powers as are delegated to them by the Legislature."

Askew v. Hale Co. 54 Ala. 639.

"The obligation of a contract is impaired when the remedy for its enforcement is postponed or retarded without the substitution of a substantial equivalent.

"We will not be understood as speaking of the operation of the orders of the Commissioners' Court on claims audited, allowed and registered subsequent to such orders. That question is not presented. Nor does it appear to us that the language of the Act of September 25, 1919, needs be construed as intending anything contrary to what has been written in this case. The trouble has been in the too broad interpretation of its powers by the Court of County Commissioners."

The Commissioners' Courts have discretion reposed in them of such peculiar nature in relation to their jurisdiction over roads, and many other matters, that no court is invested with power to revise its judgments.

Hill v. Bridges, 6 Port 197.
Parnell v. Com. Ct. 34 Ala. 278.
Com. Ct. v. Moore, 53 Ala. 25.
Askew v. Hale Co. 54 Ala. 639.
Com. Ct. v. Hearne, 59 Ala. 371.
Matkin v. Marengo Co. 137 Ala. 162.
White v. Hewlett, 142 Ala. 374.

"The Court of County Commissioners have control of all property belonging to the county." Sec. 130, Code of 1907.

"It has authority to direct and control the property of the county as it may deem expedient according to law." Sec. 3313 Code of 1907.

Summarizing, it is my opinion your duties as to said stated facts are as follows:

1. To set aside sufficient funds from the general funds, to pay the enumerated preferred claims.

2. The preferred claims as defined by Sec. 153 before the amendment, are governed by the law in force at the time of the making of the contract for which the claim was issued.

3. The preferred claims as defined by Section 153 after the amendment are governed by the law in force at the time of the making of the contract for which the claim was issued.

4. The claims not preferred are governed by the law in force at the time of the making of the contract for which the claim was issued.

5. The duly authorized acts of the Court of County Commissioners in the fiscal management of the affairs of the county would be paramount to the authority of the depository, except insofar as same attempted to impair the obligation of a contract or relegate claims contracted prior to the attempted change of the manner of governing claims by said court.

6. As to any balance of the general fund, after setting aside for preferred claims, the same should be applied to the payment of outstanding warrants in the order of their registration, and according to the law in force at the time of the making of the contract for which the claim was issued.

It appears to me for the depository to be allowed to retain the county funds for contingencies, "such as special terms of courts, loss of bridges, and other matters of a similar character" which may never arise, would grant to the depository powers co-extensive with, if not exceeding, the powers of the Court of County Commissioners, and which are not conferred on depositories by Section 211, of the Acts of 1915, page 348.

Yours very truly,

O. B. CORNELIUS,

Assistant Attorney General.

May 17, 1923.

Hon. N. R. Baker,
County Superintendent of Education,
Birmingham, Ala.

Dear Sir:

In reply to your inquiry I beg to advise as follows:

1. That the fixing of the date of an election held for the purpose of determining whether or not there should be levied for a district the three-mill district school tax, is a question to be determined by the County Board of Education for all districts under its control. The only limitation relative to the time of holding such election is that it must be called so as to permit the publication of the notice prescribed by statute. A valid election to levy such district tax for the fiscal year beginning October 1, 1923, and future years could be held before the beginning of such fiscal year beginning October 1, 1923. The call of the election, the notice thereof and the ballot determine the period of the levy. Article 12, Section 1, School Code, Acts 1919, page 617.

2. The levying of the one-mill county school tax is regulated by Article 11 of the School Code, Acts 1919, page 606. This election to levy the one-mill tax and the election in a district to levy the three-mill district tax may be held on the same day and in the districts where election is held to levy the three-mill tax the same election officers may serve in the district election and the county election. There would be separate ballots, separate ballot boxes, separate returns and a separate canvass of returns.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 24, 1923.

Mr. A. T. Kendrick,
Tax Assessor,
Greenville, Ala.

Dear Sir:

Your letter of May 14th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

Your case, as I understand it, is as follows: You and the Tax Adjuster assessed the taxes for Butler County for the tax assessment year beginning October 1, 1921. The assessment as thus made exceeded an eight million dollar tax assessment valuation, which entitled you to compensation of $200.00 for making out the book required by Section 66 of the Revenue Act of 1919. After all had been done that was required of the Tax Assessor and the Tax Adjuster, the State Tax Commission set aside the assessment of the W. T. Smith Lumber Company, by virtue of its authority under subdivision "M" of Section 138 of the Revenue Act, 1919, and subsequently reassessed the same. The valuation as fixed by the Tax Adjuster and the valuation fixed by the State Tax Commission on the property of said W. T. Smith Lumber Company made the total assessed value of the property of Butler County for the year in question more than eight million dollars. The State Tax Commission, through its chairman, Hon. Jno. S. Mooring, in September, 1922, directed you not to put the assessment of said W. T. Smith Lumber Company upon the abstract to be given the Tax Collector at that time, thus apparently reducing the tax assessment valuation for that year below eight million dollars. Since that time, the State Tax Commission has valued the property of said W. T. Smith Lumber Company for assessment for said year, and you, as Tax Assessor, have certified the assessment to the Tax Collector.

You wish to know if, under these facts you, as Tax Assessor, should receive $200.00 as for an assessment of over eight million dollars, or $150.00 as for an assessment of less than eight million dollars, for work done under the provisions of Section 66 of the Revenue Act, 1919.

In answer will say that the Tax Assessor had nothing to do with the fixing of tax values; it could by no means be considered his fault that an assessment valuation was set aside and the value fixed by the State Tax Commission. When the value was fixed by the State Tax Commission, it related back and became a part of the assessment valuation of the property in Butler County for the tax year in question. This additional value made the tax assessment valuation more than eight million dollars for the tax assessment year beginning October 1, 1921, and ending September 30, 1922. The Tax Assessor, who did all the work required

of him by law, under the supervision of the State Tax Commission, was, in my opinion, entitled to $200.00 under the provisions of said Section 66.

The total assessed value for the year was, in our judgment, the basis of valuation upon which the Tax Assessor's pay for services, rendered under said Section 66, should have been estimated.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

May 25, 1923.

Mr. W. J. Ballard,
Sheriff of Randolph County,
Wedowee, Ala.

Dear Sir:

Your written request has been received by the Attorney General as to whether or not the sum of not exceeding $90.00 which the Commissioners' Court may allow the Sheriff for discharging his duties in relation to the public roads is a part of the sum of not exceeding $600.00 as provided by the Acts of 1919, page 4.

In my opinion, they are two separate provisions of allowance for different services performed. The first above mentioned being for discharging his duties in relation to the public roads, and the sum of six hundred dollars is for empanelling grand juries, advertising and attending all elections in his county, and for all other public services not otherwise provided for.

The Supreme Court in Macon County v. Abercrombie, et al. 63 So. Rep. p. 985, defines what are ex-officio services, also suggests that the Probate Judge and Sheriff, in lieu of a public road superintendent or supervisor, are required to perform extra duties. Some of the duties which the law required the Sheriff to perform were mentioned in Sections 5769 to 5838 inclusive (as amended) and Sections 5839 to 5843, inclusive. These sections were repealed, Acts 1915, p. 623.

In your county, if you have no local road law relative to the management and control of public roads and bridges, perhaps your Court of County Commissioners have adopted rules

and regulations governing the same, and the question as to whether, or not, you would be entitled to any part of the said $90.00, in that event, would be determined by what you are required to do under said rules and regulations, so adopted, if any.

Hoping that the above satisfactorily answers your inquiry, I am

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 28, 1923.

Mr. Stafford Caldwell,
General Attorney,
Florida East Coast Railway Company,
Jacksonville, Fla.

Dear Sir:

Your letter of April 14th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You quote correctly Section 7 of an Act approved July 28th, 1919, which is in words as follows:

> "A common carrier engaged in interstate commerce shall not in transporting any passengers or in employing or transporting laborers to work for it shall not be a labor agent within the meaning of that term as herein defined."

You wish to know if the provisions of said Section 7 create a valid exemption in the State of Alabama as to common carriers.

In answer to your inquiry will say that, in our opinion, the provisions of said Section 7 are perfectly valid. It simply means that a railroad company engaged in the carrying of passengers as a common carrier, from some point or points in the State of Alabama to some point or points in another State or country, shall not be considered a labor agent for employing laborers in the State of Alabama and taking them to some point out of the State of Alabama to work solely for such common carrier in such other State or country; neither is such common carrier to

be considered a labor agent simply for transporting from Alabama, as regular passengers, in the regular way, laborers who have been hired or solicited to go or be employed outside of Alabama by some person not in any way connected with such railroad. In other words, a railroad is not to be considered as particeps criminis with labor agents, simply for transporting, as regular passengers, laborers from this State to another State or country.

Hoping that the foregoing gives you the information desired, I am

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

May 31, 1923.

The First National Bank,
Depository DeKalb County,
Fort Payne, Ala.

Gentlemen:

In reply to your favor of recent date requesting an opinion from the Attorney General, I beg to advise that the same has been referred to me, and investigating the question I find the law relative to the fees of officers of court, as provided by Section 6889, Code of 1907, to be as follows:

1. "All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred."

Code 1907, Section 150.

2. "The Court of County Commissioners has no control over fines and forfeitures, and can create no claim against the fund. The fine and forfeiture fund is subject to the control of the Legislature; the claims to be paid out of it, their preferences, and the conditions of payment may be modified or changed by the General Assembly; and it is disbursed by the treasurer according to law."

Sessions & Leary v. Boykin, 78 Ala. 328.
Sanders v. Court of County Commissioners Elmore County, 23 So. 788.
See citations to Section 211, Subdivision 5, Code 1907.

3. "The claims which must be audited by the Court of County Commissioners, and are barred if not presented within twelve months after the time they accrue, or become payable, are claims against the county."

Briggs v. Coleman, 51 Ala. 561.

4. "The claim of officers for fees arising from a criminal case in which the State enters a nolle prosequi is a claim against the surplus of the fund arising from fines and forfeitures in the County Treasury over and above the sum required to pay the registered claims of State witnesses."

Code 1907, Section 6889.

5. The claims against the fines and forfeiture fund required to be registered are claims of State witnesses (certain classes).

Code 1907, Sections 6660, 6661, 6663, 6664, 6666;

and fees of officers of court arising from criminal cases (certain classes).

Code 1907, Sections 211, Subdivision 5 and 6889 and 6890.

From the fact I have been unable to find a section limiting the time of filing claims against the fine and forfeiture fund so far as the fees of officers against said fund are concerned, and from the further fact that for the last fifty or sixty years numerous Legislatures have seen fit to pass local laws, in many of which is contained an express limit for presentation or registration, it is my opinion that the general law of the State, at the time the

Sheriff made proof of the claim in question, on May 9, 1913, did not limit the same to twelve months, and the same was a valid claim against the fine and forfeiture fund of your county at the time it was registered with the treasurer, May 21, 1913. The same having been registered within six months after approval of your local law (Local Acts 1919, p. 117), as provided by Section 3 thereof, I see no legal objection to paying the same in the order of its former registration, subordinating same to witness claims as provided by Section 211, subdivision 5, and Section 6889, Code of 1907.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

June 2, 1923.

Hon. W. B. Allgood,
State Auditor,
Capitol.

Dear Sir:

Your letter of May 29th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if on final settlement with Tax Collectors you shall allow to Tax Assessors commissions for assessing:

1st. Lands sold for taxes and bid in by the State;

2nd. For assessments made against insolvents;

3rd. On interest paid on delinquent taxes;

4th. On supplemental assessments made by the Tax Collector.

You wish further to know if you should allow commissions to Tax Collectors in case of:

1st. Lands sold for taxes and bid in by the State;

2nd. On insolvencies reported and allowed by Commissioners' Court.

In answer to the foregoing questions as to assessors, will say that Section 37 of the Revenue Act of 1919 places the commissions due Tax Assessors on tax collections instead of on assessments, as was formerly the case under the Act of 1915

and under the Code of 1907. In making this change in Act of 1919, certain wordings of the Act of 1915 were not changed and seem to be inconsistent with this view. For instance, the following: "The Tax Assessor shall be entitled to receive from the Tax Collector, out of the first money collected by him, * * * the following commissions." This, of course, could not be done very well except where commissions were on assessments. Also Section 38 of the Revenue Act, 1919, which is a copy of Section 28 of the Act of 1915, seems to indicate that the Tax Assessors' commissions are based upon all valid assessments. But, in our judgment, these actual or seeming inconsistencies must yield to the plain statement contained in said Section 37 of the Revenue Act of 1919, placing the Tax Assessors' commissions, not upon assessments, as was done in prior revenue acts, but upon collections.

There is no provision made in the law for payment by the State or county of commissions either to the Tax Assessor, or to the Tax Collector, in cases where lands are sold for taxes and bid in by the State. Such being the state of the statutes in Alabama on the subject, we are of the opinion:

1st. That Tax Assessors are not entitled to commissions on assessments of land sold for payment of taxes and bid in by the State;

2nd. That Tax Assessors are not entitled to commissions on assessments against insolvents, except to the extent that collection has been made on the assessment;

3rd. The Tax Assessor being entitled to commissions on collections, is entitled to commissions on the entire amount collected on the assessment including interest;

4th. The Tax Assessor is not entitled to commissions on assessments made by the Tax Collector.

As to Tax Collectors, we are of the opinion:

1st. That Tax Collectors cannot be paid commissions for collecting where lands are sold for payment of taxes and bid in by the State;

2nd. That a Tax Collector is not entitled to commissions on taxes reported by him and allowed by the Commissioners' Court as insolvent, until such taxes may finally be collected. If col-

lected finally by a subsequent tax collector, the commissions go to such subsequent collector.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 22, 1923.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol:

Dear Sir:

In your letter of recent date to the Attorney General you request an opinion on whether or not under those certain Acts of 1911 relating to the duties and authorities of the State Prison Inspector, pages 356 and 631, if a county and a municipality, of less than 10,000 population, own and use a jail jointly, can the Inspector, for sufficient cause, condemn and forbid the further use of the same.

Section 2 of the Act (page 631) confers on said Inspector the same powers and duties with reference to the inspection provided for in Section 1 of said Act as are conferred upon him with reference to inspections of jails.

The phrase "and to visit any and all places designated by the Governor" does not enlarge, diminish or change the kinds or classes of places, but said places are such as are mentioned and described in the two Acts.

For an analogous construction of statutes, see Perry v. Southern Express Co. 81 So. 619, where the authorities are cited and the rule stated, that the use of a phrase "otherwise disposed of" following or succeeding the words "selling or giving," extends only to a disposition adjusdem generis, with a sale or gift, and not to extend to or embrace any and every act which may be said to be a disposition.

Section 6 of the Act, page 356, limits the application of the provisions of said Act to town or city prisons in towns or cities of 10,000 or more population, while the provisions of said Act apply to all county jails.

Section 8 confers on the Inspector the right and power, subject to appeal to the Governor, to condemn jails, prisons and almshouses, and provides he *may prohibit the further use of the same* for the *confinement* of *prisoners* or *inmates,* when in the opinion of the Inspector, the unsanitary conditions warrant it.

Section 7 confers on said Inspector the authority to order in writing the Courts of County Commissioners or Boards of Revenue having the control of said jail or prison to put said jail or prison, and the ground around the same, in a proper sanitary condition.

The following are some of your duties and authorities as regard this jail:

The condemnation of the prison or jail for use of the same for the confinement of prisoners or inmates charged with an offense against the State; the right to require the prisoners removed; the authority, in writing, to notify the Court of County Commissioners or Board of Revenue that said conditions should be remedied (Section 13); the authority to order the erection, if necessary, of a new building for the keeping of said prisoners (Section 7).

The members of the Court of County Commissioners or Board of Revenue, and Sheriff, are bound to co-operate with you by obedience to said orders, in remedying the unsanitary conditions, according to the said orders of the Inspector, in order to relieve themselves from the liability to the penalty provided in Section 15 of said Act.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

June 25, 1923.

Hon. J. C. Nichols,
County Solicitor,
Heflin, Ala.

Dear Sir:

Hon. Harwell G. Davis, Attorney General, has requested me to investigate and reply to your letter of the 11th instant in which

you desire an opinion as to the constitutionality of Local Acts of 1915, page 400, entitled "An Act to abolish the office of County Treasurer of Cleburne County, Ala."

Section 45 of the Constitution of 1901 provides:

> "Each law shall contain but one subject, which shall be clearly expressed in its title."

Section 2 of the said Act is not included in the title, and is therefore, not legally enacted.

Bradley v. State 99 Ala. 177.

I do not think effect can be given to the legislative intent by the remaining Section 1 of said Act, as it was not the intention to abolish this office without providing a means for the safekeeping of the funds of the county; for that reason, in my opinion, the Act is unconstitutional and void.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

June 25, 1923.

Hon. J. F. Posey,
Judge of Probate,
Prattville, Ala.

Dear Sir:

Your letter of June 8th addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply.

You wish to know if a person running a drug store would have to take out a license under Schedule No. 75 before he could legally sell either newspapers, magazines and periodicals.

In reply will say that a person running a drug store is just in the same position with reference to selling newspapers, magazines or periodicals as he would be if he did not run a drug store. In other words, running a drug store has nothing to do with the case. The question is does he operate a newsstand for

the sale of newspapers, magazines and periodicals? If he does, he must take out the license; if he does not keep a stand where he sells newspapers, magazines and periodicals, then he is not due a license whether he runs a drug store or not.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 26, 1923.

Judge J. A. Carnley,
Elba, Ala.

Dear Judge:

Your letter to the Attorney General requesting an opinion on the questions below stated has been referred to me for answer thereto, to-wit:

1. Should preferred claims against the county be paid by the County Depository, or acting treasurer, only in the order of their preference as set forth in Section 153 of the Code of 1907, as amended by Act of the Legislature of 1919, pages 1110, 1111.

2. Should this class of claims be registered in order to be preferred to registered, non-preferred claims?

3. Should preferred claims be registered so that they may be paid in order of registration when they belong to the same class of preferred claims?

4. Can a claim for stationery, which is in the fifth class of preferred claims, when registered, be postponed until registered non-preferred claims have been paid, when such non-preferred registered claims have been registered ahead of the stationery claims?

5. Should claims for paupers be paid before claims for county officers, or in other words, should these claims be postponed till all other preferred claims have been paid?

Section 211 of the Code of 1907, subdivision 2, as amended by Acts of 1919, page 860, provides the treasurer shall pay out of the general funds of the county, *on presentation,* and without being audited and allowed by the Court of County Commissioners, all grand and petit juror certificates, and shall pay all other claims against the general funds that have to be allowed and audited only after they have been audited and allowed, and a

warrant has to be issued therefor; but only to the extent so allowed, any warrant to the contrary notwithstanding, and in making payments from said fund he shall observe the order of preference as prescribed by Section 153 of the Code.

Section 153 as amended by Acts of 1919, page 1110, provides it is the duty of the County Treasurer to set apart a sufficient fund from the moneys of the county, for the payment of the preferred claims.

Also see Allen v. Watts, 88 Ala. 497.

Section 211, subdivision 4, makes it the duty of the County Treasurer to number and register, in the order in which they are presented, all claims against the general fund which have been audited and allowed by the Court of County Commissioners, as claims against such fund * * * and, except as otherwise provided by law, to pay the same in the order of their registration.

Since the law makes it a duty of the treasurer to set apart sufficient funds to pay the preferred claims, and states he shall observe the order of preference in making payment as provided in said Section 153, these claims should be paid on presentation, in the order of presentation, having regard to the class of preference to the exhaustion of the fund so set apart.

For the reasons above stated, it is my opinion, your question No. 1 should be answered in the affirmative; your question No. 2 should be answered in the negative; your question No. 3 should be answered in the negative, except as to when there should be no funds in the treasury to pay same on presentation.

Your question numbered four is answered in the negative, and as to payment of claims for paupers before payment of claims for county officers, it is my opinion that said Act of 1919, page 1110 places certain claims of county officers mentioned therein in a class preferred ahead of the claim for the support of the poor.

Hoping the above sufficiently answers your inquiries, I am,

Yours very truly,

O. B. CORNELIUS,

Assistant Attorney General.

June 26, 1923.

Mrs. Sara C. Douglass, Superintendent,
State Training School for Girls,
Birmingham, Ala.

Dear Mrs. Douglass:

Replying to your letter of the 18th instant requesting an opinion from this office, I find that the Act creating The Alabama Home of Refuge, which name has since been changed to the State Training School for Girls, provides as follows:

> "That it shall be the duty of said Board of Managers in carrying out the purposes for which said home of refuge is established *so far as its available resources will allow* to receive, care and provide for the welfare therein of all white delinquent females the ages * * * (Italics supplied.)
>
> Acts 1911, p. 396, Section 6.

You may refuse to admit girls who would otherwise be admissible if your resources are not sufficient to care for and maintain more than those already legally admitted.

In certain cases, specified in Section 7628 of the Code of 1907, courts may suspend sentences, and may be able to relieve you to some extent.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

June 27, 1923.

Mr. Oscar Horton,
Tax Assessor,
Guntersville, Ala.

Dear Sir:

Your letter of June 8th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know "Who is entitled to commissions on escape assessments?"

I judge that you mean commissions for assessing escaped property for taxes.

You also ask "If the abstract to the State Department shows that the report is made out in the name of the Tax Collector, is he entitled to the commissions?"

In answer to your questions will say that we know of no provisions of the law whereby a Tax Collector receives commissions on assessments, or for assessing property for taxation; the commissions that he receives are for collecting.

Under the Revenue Act, 1915, the Tax Assessor received commissions on the amount of the assessment, except in case of errors. Acts 1915, Sections 27 and 28, pages 401, 402. Under the Revenue Act, 1919, the Tax Assessor receives commissions for assessing on the amounts collected. Revenue Act 1919, Section 37.

Such being the case, there can be no question as to the commissions due both the Tax Assessor and the Tax Collector, both are based upon the amount actually collected, and not upon the amount of the assessment.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 27, 1923.

Hon. I. T. Quinn, Commissioner,
Department of Conservation,
State Capitol.

My dear Sir:

You request an opinion from this office on the following question:

Has the State Department of Conservation the right to confiscate fish nets, seines, etc., found in illegal use?

The laws of this State do not prohibit the possession of fish nets, seines, etc.; there are waters on which they may legally be used.

It is a disputed question in some States whether or not a statute declaring that the illegal use of such property is a nuisance and providing for its destruction is constitutional. It has also been held by some States that such use of property does not constitute a nuisance.

17 A. L. R. 574.

There is no provision in this State giving your department authority to confiscate such property for any purpose.

You call attention to that part of Section 1, Acts 1919, p. 73, which reads as follows:

> "and it shall be prima facie evidence of a violation of the provisions of this section for any person to have in possession any net, seine, trap or other device as a substitute therefor, in, on, or in a boat on, or about, any of the creeks, rivers, or other streams, estuaries, lagoons or lakes emptying into any of the salt waters or bays of this State in which the use of the device for taking fish set forth in this section, is prohibited."

This provision is merely a rule of evidence, and certainly cannot be construed to require the introduction in evidence of the seine or net itself in order to make out a prima facie violation of the law.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

June 23, 1923.

Mr. C. B. Smith,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of March 4th addressed to Hon. Harwell G. Davis, Attorney General, with file for franchise tax *in re* Helvetia Milk Condensing Company attached has been referred to me for reply.

The question raised is whether or not capital employed by the Helvetia Milk Condensing Company in Alabama, for purposes of interstate commerce, should be considered as part of the amount of capital employed by said foreign corporation in this State for the purpose of estimating the amount of franchise tax due by said corporation to the State.

In answer to this question will say that our constitution and statute both say that foreign corporations doing business in this State shall pay a franchise tax in proportion to the amount of capital employed in this State. It is immaterial for what purpose the capital is employed, if such foreign corporation is doing business in this State. Of course, a foreign corporation may do a strictly interstate business with residents of this State, without having to qualify as a foreign corporation to do business in this State; and, where a foreign corporation does not qualify to do business in this State, it is not due a franchise tax; but if and when it does qualify to do business in this State, it is required to pay 60c on each thousand dollars of capital employed in this State, no matter for what purpose it is employed, whether intrastate or interstate business.

The right of a State to make such a rule of law has been thoroughly tested in the Supreme Court of the United States, and there upheld.

Horn Silver Mining Co. v. N. Y. 143 U. S. 305; 36-L. Ed. 1

In the case above cited the Supreme Court of the United States says:

> "There is no constitutional inhibition against the Legislature adopting any mode to arrive at the sum which it will exact as a condition of the creation of the corporation or its continued existence. There can be, therefore, no possible objection to the validity of the tax prescribed by the statute of New York, so far as it relates to its own corporations. Nor, can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation, and all corporations in States other than the State of their creation are deemed to be foreign corporations, it can claim a right to do business in another State to any extent only subject to the conditions imposed by its laws."

The foregoing very clearly illustrates the matter under consideration. One of the conditions imposed by the State of Ala-

bama upon foreign corporations, for doing business in this State, is that such foreign corporations shall annually pay to the State of Alabama, together with some one or more of its counties, an amount equal to 60c of each one thousand dollars of capital employed in this State—no matter for what purpose it is employed. This is not a tax upon interstate commerce, although a part of such capital may be employed in interstate commerce. It is merely the way of estimating the amount of franchise tax which a foreign corporation shall pay for the privilege of doing business in this State. The only question to be determined in any case is, is the capital in question employed in this State? If so, the amount of it must be considered in estimating the franchise tax; if not, it is not so to be considered.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

P. S. We herewith return the file.—A. A. E.

July 5, 1923.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Hon. Harwell G. Davis has referred to me for an opinion, your recent written request, on whether or not a publication of the entire alphabetical list of qualified electors, after the first publication of said list, and the names of those left off of the first list have been added thereto, should be paid for by the county.

Section 18 of the Acts of 1920, page 124, provides for the publication of the list as first prepared, also a publication of "An alphabetical list by districts and precincts of those so added," but said Acts do not provide for a publication of a revised list, as was done in your case. The decisions of the Supreme Court are to the effect that "The county is liable for only those claims which the law imposes or authorizes to be contracted."

See Ensley Motor Car Co. v. O'Rear, Treas., 196 Ala. 481 and cases there cited.

This second publication being authorized only to the extent of the names added after the publication of the first list, it is my opinion that the county is liable for the names added.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 6, 1923.

Hon. Robert Locke,
Sheriff,
Butler, Ala.

Dear Sir:

You request an opinion from the Attorney General on the construction to be placed on the last sentence in the Act approved September 30, 1919, amending Section 3713 of the Code of 1907 (Acts of 1919, p. 884).

This sentence allowing the clerk of the Circuit Court a fee reads as follows:

> "Collecting money on judgments wherein said judgment has not been paid within 30 days after its rendition, one-half the per cent allowed Sheriffs for the same services for collecting money on executions."

In my opinion it is not contemplated to allow both the Sheriff and the clerk compensation for one and the same act of collecting, but by Acts of 1919, page 4, the Sheriff is allowed the following:

> "Collecting money under execution: For the first hundred dollars, five per cent; for collecting all sums over two hundred dollars, up to and including five hundred dollars, four per cent; and for collecting all sums in excess of five hundred dollars, three per cent; but no commission shall be collected on costs."

If after execution is placed in the hands of the Sheriff, collection is made, it is done by the Sheriff, and the clerk is not

entitled to a fee for collecting, for he has not performed said act of collecting, therefore it is my opinion the clerk is not entitled to this fee, after execution is issued and in the hands of the Sheriff, but only before same has been placed in the hands of the Sheriff, and after the 30 days provided in said Act, after rendition of judgment.

If the clerk fails to collect during the time above mentioned he is not entitled to a fee, and if the Sheriff, under process, collects the same he is entitled to the fees provided by said Acts of 1919, page 4.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 6, 1923.

Hon. Frank C. Turner,
Judge of Probate,
Chatom, Ala.

Dear Sir:

The Attorney General is in receipt of your request for an opinion on the authority of your county to issue interest bearing warrants at not greater than six per cent for the purpose of taking up outstanding non-interest bearing warrants which have been issued for tick eradication work, and, if legal for your county to do so, the mode of procedure.

The authority of a county to issue interest bearing warrants for certain purposes is supported by the following cases, among others:

Marengo County v. Barley, et als., Ms.
Board of Revenue v. Merrill, 193 Ala. 521.
Town of Eutaw v. Coleman, 189 Ala. 164.
Littlejohn v. Littlejohn, 195 Ala. 614.

General Acts of 1919, page 903, provide in Section 1, "The Court of County Commissioners * * * is authorized and empowered to issue interest bearing warrants of the county for * * * other necessary expenses of the county or money bor-

rowed for tick eradication or as security for money borrowed for the payment of any such debt or other obligation, and to issue and sell such warrants to secure funds for the payment of any such debt or other obligation."

Section 8 provides that "The said interest bearing warrants hereby authorized to be issued may be applied in payment on any of the debts or obligations of the county for which the issue of interest bearing warrants is authorized or given as security for money borrowed, or may be sold publicly or privately and the proceeds applied to the payment of the debt or other obligation of the county for which the issue of said interest bearing warrant may have been authorized."

Without the statutory authority this class of claims is governed by the rule of law announced in the opinion of the Attorney General and the authorities cited therein. (See Reports 1920-1922, page 116.)

The authority contained in said Section 1 is to the effect that interest bearing warrants may be issued for "other necessary expenses" or "money borrowed for tick eradication," or "as security for money borrowed for the payment of any such debt or other obligation."

The phrase "other necessary expenses" follows the phrase "necessary public buildings for the county" and necessarily refers to the same class of debts.

As your county proposes to issue the warrants, not for any of the purposes mentioned but for the purpose of paying off a debt or obligation already created, and for which a warrant was issued and is now outstanding, it fails to be included within the provisions of said Section 1.

I do not think Section 1 authorizes the issue of an interest bearing warrant to refund a non-interest bearing warrant, as it does not so provide.

Section 8 merely authorizes the application of the said warrants, or the proceeds from a sale thereof, to the payment of the debt or obligation for which the issue of said warrants may have been authorized. It does not increase the instances in which the warrants may be issued, but directs and controls the warrants or proceeds after issue of the same.

Therefore, no authority to issue for the present purposes being contained within the Act, the right and authority to do so is governed by the authorities cited in the report of the Attorney General, supra. See pages 116 to 118, inclusive.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 9, 1923.

Hon. D. C. Ball,
President Board of Revenue,
Birmingham, Ala.

Dear Sir:

Hon. Harwell G. Davis has referred to me your recent written request for an opinion on the power and authority of the Board of Revenue of Jefferson County to adopt rules and regulations restricting traffic after rain, or to specify the loads to be hauled, upon certain classes of public roads in Jefferson County.

In Schedule 7 of the License Act approved September 15, 1919, pertaining to the licensing of automobiles is found the following:

> "Provided that it shall be unlawful to carry over any of the public roads of the State any vehicle whose aggregate weight, including load, is more than ten tons," etc.

The Board of Revenue of Jefferson County has been granted "The general control and supervision of the working, maintenance, building and improvement of the public roads and bridges in Jefferson County and all matter incident thereto."

Act approved March 3, 1903, Section 4.

"The Courts of County Commissioners, Boards of Revenue, or other like governing bodies of the several counties of this State are invested with a general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as prac-

ticable. To this end they are given legislative, judicial and executive powers, except as limited herein." They "are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the" same, *"except as their jurisdiction or powers may be limited by the local or special statutes* of the State. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed necessary or advisable by such courts system of" same, "and regulate *the use thereof."*

"Provided, that nothing in this Act shall be construed to authorize the courts of County Commissioners, Board of Revenue, or other like governing bodies of the several counties to establish, promulgate or enforce any rules, regulations or laws which may be in conflict with a local or special law providing for the *working, maintenance, change,* discontinuance or improvement of the public roads, bridges or ferries of such county, *now in force or which may hereafter be enacted.*

Section 1, Acts of 1915, page 573.

There is no part of the local laws of Jefferson County either *conferring,* or *denying* the *power* and *authority* of the Board of Revenue of Jefferson County in limiting or prohibiting *excessive loads* on the *county highways,* except as above stated.

The decisions of the Supreme Court in the case of Hill v. Bridges, 6 Port. 197, quoted approvingly in Board of Revenue of Covington Co. v. Merrill, 193 Ala. page 521, used the following language:

> "The discretion reposed in that court (Commissioners' Court) is of so peculiar a nature, in relation to their jurisdiction over roads, and many other matters that it is difficult to perceive for what reason it could be supposed that this or any other court is invested with power to revise its judgments * * * . The Legislature, in committing this species of local legislation to a tribunal, emanating immediately from the people of the county, cannot be supposed to have intended their discretion to be subject to revision. *Cases may arise in which an improper action by the Court*

of Commissioners might be controlled by a Court of Chancery."

The said decision in the 193 Ala. says further:

"In all the decisions of this court, on the point, since the above announcement, nothing more has been attempted than to specifically define the instances in which 'an improper action by the Court of Commissioners might be controlled by the Court of Chancery,' and such instances are limited to those cases where, from fraudulent or corrupt motives, or in unfair dealings, to secure a personal benefit to the members thereof, or to some third person, the court or board take the questioned action."

The power conferred on the Board of Revenue of Jefferson County, Acts of 1903, Section 4 to control and supervise the maintenance and improvement of the public roads; and the power to *establish, promulgate* and *enforce rules* and *regulations* to *improve* and *maintain* a good system of public roads and *regulate* the use *thereof* conferred by Acts of 1915, page 573, upon all counties of the State, not having a local or special law to the contrary, necessarily confers upon the Board of Revenue of Jefferson County the power and authority to adopt reasonable rules and regulations.

Whether or not a rule or regulation restricting traffic after rain, or specifying the loads to be hauled over the public roads at any time, is necessary and legal would depend upon the character and class of road, the necessity of the road for the character of hauling restricted, the restriction placed on the use of said road, all, in each instance, being a question of fact, incapable of determination in advance.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 9, 1923.

Mr. C. W. Stubblefield,
Tax Assessor,
Jasper, Ala.

Dear Sir:

Your letter of July 5th to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. Your letter reads as follows:

> "I have been authorized to assess the taxes for the coming year for the City of Jasper. The Mayor of the city also wants me to assess escape taxes for the past five years. Please advise me as to the legality of the last."

I notice from your letterhead, and from the list of officers published by Marshall & Bruce, that you are Tax Assessor of Walker County. I would therefore advise that it is your duty as Tax Assessor of Walker County to assess all taxable property for each year that it has escaped taxation during the past five years, for State and county purposes, and the assessments thus made will automatically go into the city assessment as to such property assessable by the city. Escaped property cannot be assessed for the city in the first instance; it must first be assessed for State and county. The constitution requires this. The city levy is upon the valuation made by the tax assessing authorities for the State. Constitution 1901, Section 216.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

July 10, 1923.

Hon. W. H. Shaw,
Deputy Circuit Solicitor,
Tuscumbia, Ala.

Dear Sir:

Your letter of recent date to the Attorney General, and which has been referred to me for answer, contains the question whether the Clerk of the Circuit Court as ex-officio clerk of the County

Court by virtue of Acts 1919, page 200, is entitled as such to fees for services for issuing process from the County Court, in preliminary hearings, wherein the defendant is discharged.

It is my opinion that the Judge of Probate, as an ex-officio judge of the County Court, while presiding at a preliminary hearing acts as a committing magistrate, and is bound by the statutes pertaining to preliminary proceedings.

No fee must be taken but in cases expressly provided by law. Code Section 6631.

You will find from an examination of Code Section 6652 that the costs of both committing magistrate and constable, and the State witnesses on the preliminary hearing are limited to ten dollars, taxed and paid as other items of costs incurred by the State. This provision is the only one I have been able to find which allows any costs or fees to officers in preliminary proceedings. It certainly allows none in case the defendant is discharged.

The section allowing fees of officers to be paid out of the fine and forfeiture fund in certain cases is Section 6889, which you will observe does not include preliminary proceedings in which the defendant is discharged.

The defendant could not have been convicted, and the costs in case the defendant was bound over, follow the case into the court in which defendant is bound to appear, and are taxed at the end of the prosecution and collected as the statutes require.

Hawkins ex rel O'Brien v. State, 124 Ala. 102.

For the reasons above stated I know of no provision of law allowing the said fee as a claim against the fine and forfeiture fund, and I am of the opinion it could not be paid out of the same.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 11, 1923.

Judge Chas. E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

By request of Hon. Harwell G. Davis, I will answer your inquiry of the Attorney General as to the duty of the Sheriff and clerk, respectively, of Jefferson County, to make demand of the defendant for that part of the costs incurred by the defendant in the suit, for which a judgment was rendered in said cause in favor of the defendant, and against the plaintiff, and on which judgment and execution has been issued against the plaintiff placed in the hands of the Sheriff, and by him returned "no property found." I beg leave to advise you as follows:

"The judgment in favor of a party for costs does not relieve him from liability to the officers or the witnesses for their fees, though a judgment has gone against the other party for costs, which included such fees."

Danforth vs. McClellan, 72 Sou. 104.

Section 2 of the Act approved September 14, 1915 (Local Acts of Jefferson County, page 318) provides, "The cost, charges of courts, fees and commissions now authorized by law to be collected and retained by the several officers of Jefferson County above named, shall continue to be collected, but shall be paid into the County Treasury by the officer collecting the same, as other moneys belonging to the county are paid."

The effect of said act was to place the ownership of the costs, fees and commissions, arising after the passage of said Act, into Jefferson County, who is owner of same. Consequently the officers having no right, title or interest therein, in case of a suit brought against the defendant, for the same, the necessary and proper party would be Jefferson County.

Code 1907, Section 2489 and authorities.

Therefore, the general duties and authorities of said officers in my opinion, are sufficiently broad to authorize the Sheriff

and clerk to make demand against the defendant for said costs, yet, I do not know of any section of law which requires them to bring suit for the same for the county, or in its name.

Section 6 of the Act approved September 10, 1915, as to Sheriff's fees, is practically the same as Section 2 above quoted.

To say an officer should make demand for the said fee under the sections cited, is saying no more than that a moral duty rests upon him by virtue of his office to endeavor to collect the funds belonging to his county. I know of no provision of law to the effect if he should fail to do so, he is liable for the same, nor do I recall a provision which would require him to enter suit in the name of the county for the same.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 12, 1923.

Mr. W. C. Blasingame,
Director Bureau V. D. Control,
S. A. U. S. Public Health Service,
Montgomery, Ala.

Dear Sir:

Your letter of the 11th instant requests this office to advise whether or not funds can be used by you to pay an attorney to give you legal advice relative to your official duties. This office will not attempt to advise relative to the distribution of Federal funds, as the rulings of the Attorney General of this State on such matters would have no official weight.

The Act approved February 10, 1923, Acts First Session 1923, page 40, provides that "all legal work concerning the interest of the State or any department thereof should be under the direction and control of the Attorney General, and the employment of any attorney for the purpose of representing the State or any department thereof shall be by the Attorney General."

This provision had for its specific purpose preventing the employment by various departments of attorneys, and placing the entire legal work of the State in the office of the Attorney

General. No appropriation, therefore, made to a department by the State of Alabama could be used for paying attorney's fees except for those attorneys employed by the Attorney General.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 12, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of the 11th instant states that a bill has been introduced which has for its purpose the payment to Tax Collectors all commissions on taxes forfeited by virtue of the provisions of Section 232, Acts 1919, page 351, because of a failure of such Tax Collectors to make a settlement with the State by July 10th. The author of this bill desires to be advised as to its constitutionality.

Section 87 of the Constitution of 1901 is as follows:

> "It shall be the duty of the Legislature to regulate by law the cases in which deductions shall be made from the salaries or compensation of public officers for neglect of duty in their official capacities, and the amount of such deduction."

The provision of Section 232 of the 1919 Revenue Act, supra, was evidently enacted by the Legislature in obedience to the mandates of this section of the constitution. This provision of the Revenue Act creates a liability of the Tax Collector to the State of Alabama whenever he fails to make by the 10th of July any of the settlements required by the Revenue Act to be made by the 10th of July of that year.

Section 100 of the constitution provides as follows:

> "No obligation or liability of any person, association or corporation held or owned by this State, or by any county

or other municipality thereof, shall ever be remitted, released or postponed, or in any way dismissed by the Legislature, nor shall such liability or obligation be extinguished except by payment thereof."

In my opinion this section was incorporated in the constitution for the express purpose of preventing just such acts and relief as contemplated by the bill to relieve Tax Collectors of these penalties.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 12, 1923.

Hon. J. M. Moore,
Commissioner of Agriculture and Industry,
Capitol.

Dear Sir:

Herewith is returned to you the advertisement and chemical analysis of the bottled drink "Grapico." The advertisement and the bottle in which the drink is sold to the public contains large bunches of grapes and some of the advertisements state that it is a grape juice product. The chemical analysis shows that both the color and flavor of the drink are artificial.

It is evident that the artificial color and flavor, the name "Grapico" and the large, luscious bunches of grapes prominently displayed in the advertisement and on the bottle in which the drink is sold to the public are used to misrepresent the contents of the bottle.

The Act approved September 1, 1915 (Acts 1915, page 339) makes it a misdemeanor to publish an advertisement which is untrue, deceptive or misleading for the purpose of selling to the public. From the facts submitted to this office, I am of the opinion that the advertisements, which are herewith returned to you, violate this law.

The Act approved September 29, 1919 (Acts 1919, page 1031) and the Act amended thereby prohibits the misbranding

of such drinks. Misbranding as used in that statute is defined to mean "a design or device regarding such article or any of the ingredients or substances contained therein which shall be false or might prove deceptive as to the true character of the product."

Sec. 4, page 1033.

From the facts submitted to this office, it is my opinion, that the bottle in which this drink is retailed to the public is misbranded and violates this law.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 13, 1923.

Hon. Hugh L. McElderry,
County Commissioner of Talladega County,
Talladega, Ala.

Dear Sir:

The Coosa River is between St. Clair County and Talladega County, the boundary of Talladega County being the low water mark on the Talladega County side of the river. You wish to be advised whether these counties can contribute to the purchase by the State of a bridge across this river between the counties.

The State Highway Bill provides that "if it deems best, the State Highway Commission may condition an appropriation for a bridge upon the appropriation by the county for such purpose of an amount fixed by the State Highway Commission, which amount shall be paid into the State Treasury." Acts Special Session 1921, page 54, Section 13.

The Act approved October 6, 1920, provides that the governing authorities of adjoining counties, the territory of which is divided by a stream are empowered to join in or contribute to the payment of the expense of establishing a bridge across such stream upon such equitable terms as may be determined by the governing authority of said counties. (Acts Special Session 1920, page 146.)

In my opinion Talladega County and St. Clair County have authority to contribute to the purchase of a bridge across the Coosa River between the counties, and the amount contributed by each county is to be determined by the Court of County Commissioners or like body of each county.

The financial ability of the county and the method of financing the project is pretermitted.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 14, 1923.

Dr. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You request to be advised whether the State Board of Education has legal authority to add a book to the list of text books selected by the text book committee, and to make a contract with the publisher for such book.

Section 8 of Article 3 of the Educational Code (Acts 1919, page 572) provides that "the State Board of Education shall prescribe the text books to be used in the elementary schools of the State." The same section, however, also provides that "for the selection of such books the State Board of Education, upon the recommendation of the State Superintendent of Education, shall appoint a text book committee."

A reading of Article 23 of the School Code (Acts 1919, page 333), which defines the powers and duties of the text book committee, readily convinces one that it was the intention of the lawmakers to place in the hands of a committee especially qualified for that purpose the selection of every text book to be used in the elementary schools of this State. Section 4 of this article makes it the duty of the text book committee to select and adopt a uniform series of text books for use in the public schools of the State. Section 5 of this article makes it "unlawful for any school official, director or teacher to use any

books upon the same branches other than those adopted by said text book committee to the exclusion of the regularly adopted text."

Section 7 of this article gives the State Board of Education power by a three-fourths vote to drop an unsatisfactory book at the end of the school year, but provides further that their power to adopt a book in lieu of the one dropped depends upon the recommendation of the State Text Book Committee.

There are many other provisions in this article to which reference could be made, which show conclusively that it was the legislative intent not to permit any book to be used in the public schools of the State which had not been passed on first by the State Text Book Committee, a committee selected because of its special qualifications to determine whether or not a book should be taught in the elementary schools of the State.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 16, 1923.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Replying to yours of recent date as to license tax of an optometrist who is selling eyeglasses, we refer you to Schedule 76 of the Revenue Code of 1919. Under that provision a practicing optometrist shall pay a *State* license of $5.00 *unless* he has paid the license tax for selling eyeglasses required by Schedule 49.

Schedule 49 requires a license of $5.00 for selling eyeglasses. Under the provision of Section 362 of the same Act this schedule carries with it a county license of $2.50 in addition to the $5.00 State license.

It is our opinion that if the optometrist is engaged in the business of selling eyeglasses, he is liable under Schedule 49 and Section 362 of the Revenue Act for $5.00 State and $2.50 county license tax but upon the payment of this, he is exempt under Schedule 76.

If the optometrist also peddles his spectacles and eyeglasses, he is liable in addition to the above for the license required by Schedule 80, viz., to $15.00 State and $7.50 county license, for each county in which he peddles if he travels on foot; to $35.00 State and $17.50 county for each county in which he peddles, if he travels in a vehicle.

Hoping this gives you the information desired, I am

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

July 18, 1923.

Hon. Mayer W. Aldridge, Chairman,
Alabama State Board of Accountancy,
Montgomery, Ala.

Dear Sir:

Query: "Under the provisions of Section 5 of the Act of February 17, 1919, creating the Alabama State Board of Public Accountancy, this board is authorized to register the certificate of any Certified Public Accountant issued under the law of another State and to issue to such Certified Public Accountant a certificate enabling him to practice and use the abbreviation "C. P. A." in this State, provided that the State issuing the original certificate grants similar privileges to the C. P. A.'s of this State.

"On February 17, 1923, Congress passed an Act creating a Board of Accountancy for the District of Columbia, a copy of which is hereto attached. Section 6 of said Act of Congress contains reciprocity provisions of the same sort as those contained in the Alabama Act.

"The question is submitted whether or not the Alabama State Board of Public Accountancy may establish reciprocal relations with the Board of Accountancy for the District of Columbia under the provisions of the Alabama Act above mentioned."

While the word "State" is often used in contradistinction to territory, yet in its general public sense and as often used in statutes, it has the larger meaning of any separate political community including the District of Columbia and the territories.

Talbott v. Silver Bow County Comm. 139 U. S. 438; 35 L. Ed. 210.
Neil v. Wilson, 12 Pac. 810.
Downes v. Bidwell, 182 U. S. 244; 45 L. Ed. 643.

Section 6 of the Political Code (1907) of Alabama provides:

"The word 'State' when applied to different parts of the United States, includes the District of Columbia, and the several territories."

It is my opinion that the word "State" as used in Section 5 of the Act creating the Alabama State Board of Accountancy (*supra*) includes the District of Columbia and the several territories of the United States. It follows that the Alabama State Board of Accountancy may establish reciprocal relations with the Board of Accountancy of the District of Columbia.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 24, 1923.

Hon. P. B. Jarman, Jr.,
Assistant Examiner,
Jasper, Ala.

Dear Sir:

Hon. Harwell G. Davis has referred to me for answer your inquiry as to what commissions the Tax Assessor and Tax Collector of Walker County are entitled to receive on special school taxes.

Local Acts of 1898-99 (page 847), directs and requires the Commissioners' Court of that county to levy and have collected for the year 1899, and each year thereafter, a tax of not less than ten cents on the one hundred dollars worth of the value of all taxable property in the county as assessed for revenue for the State for the maintenance of the public schools in said county.

Section 6 of said Act also provides that the Tax Assessor and Tax Collector shall receive no additional compensation for assessing and collecting and handling, as imposed upon them by the provisions of this Act.

There has been no local law passed by the Legislature repealing this law.

The Code of 1896, Section 3997, carried into the Code of 1907 as Section 2164, providing for commissions to be paid to the Tax Collector and Tax Assessor on special taxes assessed and collected has remained the same, there being no change in the law since the enactment of this local law, therefore, there has been no repeal of this local law by general law.

For the reasons above stated, it is my opinion, the said local law prevails over the general law, as to commissions on the special school tax provided by said Act, and the Tax Assessor and Tax Collector are not entitled to any commissions on said special school tax.

However, this local Act would not, and does not, affect the general provisions of Section 2164 of the Code of 1907, allowing them commissions on special taxes, and they are entitled to the commissions provided by Section 2164 on all special school taxes, except this special school tax levied and collected by virtue of said local law.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 25, 1923.

Hon. W. P. Johnson, Pres.,
Court of County Commissioners,
Gadsden, Ala.

Dear Sir:

In reply to your letter requesting an opinion from me in regard to the right of the Court of County Commissioners of your county to now select a bank to act as depository of the county funds of your county, I beg to advise you as follows:

Section 4 of the Acts of 1919, page 348, authorizes, and makes it a duty for the Court of County Commissioners, from

sealed bids, to place the county funds, with an incorporated State or National Bank, the bids being opened on the first Monday in December of each year. While this Act provides that the bids shall be opened on the first Monday in December, no part of the Act appears as a limitation upon the power of the court, to perform this duty after the specified time.

In Mitchell v. State, the Supreme Court says as follows:

> "The rule is that where a statute directs when an official act touching the rights and duties of others shall be performed, the time of performance will be considered as directory, unless the nature of the act to be performed, or the language of the statute, shows that the designation of the time was intended as a limitation upon the power of the officer."
>
> Mitchell v. State, 168 Ala. 102.

An earlier case to the same effect in which other authorities are cited is the case of Birmingham Building & Loan Association v. State, 120 Ala. 405.

As no selection has been made for this year, I am, therefore, of the opinion that it is legal for the Court of County Commissioners to require bids, and from the sealed bids to select a depository for the remainder of this year.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 31, 1923.

Hon. J. I. McClure,
Judge of Probate,
Florence, Ala.

Dear Sir:

Your letter of July 26th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

Your inquiry is as follows:

"The City of Florence has recently purchased from W. J. Kernachan and J. N. Kernachan certain real estate in the City of Florence. The city made only a small payment in cash and gave its mortgage for the balance. The mortgage has not been presented for record but the city has presented its deed for record but takes the position that the city is not liable for the mortgage tax imposed by the Acts of 1919, page 282, on the ground that it is a municipal corporation, and by the terms of the Act is exempted from such taxation.

"I would appreciate if you would advise me whether the city is liable for this tax as soon as possible as the matter is being held in abeyance pending your decision."

On examination of Schedule 71, you will see that the filing tax in the case you mention must be paid by W. J. Kernachan and J. N. Kernachan and not by the City of Florence. Under the provisions of said Schedule 71, they are the lenders and must pay the filing tax before you can legally secure such deed for record. Said schedule provides, among other things, the following, viz., "and no such paper shall be received for record unless there is filed therewith a certificate that the privilege tax was paid by the lender. (b) That when any deed is filed for record which recites that part of the purchase money is unpaid, such deed to the extent of such unpaid balance shall be held and treated as a mortgage and the mortgage tax shall be collected by the Judge of Probate, in addition to the tax for recording the instrument as a deed before recording the same, unless," etc.

If the deed is to be held and treated as a mortgage, who then is the mortgagee or lender secured thereby? Evidently the maker of the deed to whom the debt is due and who thereby retains a lien for the payment of the debt. There is, therefore, no occasion to decide whether or not cities are exempt from the payment of this tax in a proper case. There is no provision in the Act exempting cities from the payment of any privilege tax. The only exemption mentioned in the Act of 1919, for cities is from *ad valorem* taxation. The City of Florence is in the position that it cannot legally have its deed filed for record unless the grantors in the deed, who are the

mortgagees and lenders under Schedule 71, shall see fit to pay the filing tax.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 3, 1923.

Mr. W. J. Baxter,
County Treasurer,
Luverne, Ala.

Dear Sir:

The Attorney General has referred to me your letter of the 1st inst., in which you inquire whether officers of the Law Enforcement Department are entitled to collect mileage and per diem while attending court as witnesses for the State.

The statute which covers the employment of these men provides that they "shall be paid such compensation as the Governor may agree upon with the several members of the force—payable monthly on the auditor's warrant, drawn upon the Governor's certificate." Acts Special Session 1920, page 8.

Section 6649 of the Code of 1907 provides that "witnesses in criminal cases are entitled to one dollar per day and five cents for each mile to and from their residence by the route usually traveled and all necessary ferriages and toll."

There is no provision in these statutes, as will be noted, which requires members of the force to attend court or appear as witnesses for the compensation agreed upon by the Governor, without collecting witness fees, nor is there any inhibition in these statutes against the collection of such per diem and mileage. I am therefore of the opinion that they are entitled to collect the per diem and mileage referred to just as though they were not in the employ of the State. I do not think the fact that these men are employed by the State has any bearing whatsoever upon their right to collect compensation for attending court. Of course, you are not concerned with the question as to how the collection of such costs and per diem shall affect the amounts which shall be paid to them for their services and expenses as members of the department in which they are working.

In the support of the opinion set forth, above, I quote from the case of Lay v. State, 202 S. W. 729 (Texas) as follows:

> "With reference to misdemeanors, there is no interdiction of the charging of witness fees so far as officers are concerned. They seem to come within the general class of witnesses, and are entitled to the same fees as other witnsses in misdemeanor cases. A witness in a misdemeanor case can be paid no fees other than those provided, but is entitled to charge such fees as the statute enacts. There being no difference with reference to misdemeanor cases as to the character of witnesses, whether officers or not, the officer would come within the general category, as we understand the law, as witness. His official character, so far as that proposition is concerned, would make no difference. There are no traveling expenses in the case to complicate; therefore we have the question as to whether or not an officer in misdemeanor cases can charge fees as a witness for his attendance upon the court. We are of the opinion that he can, and that the court did not err in allowing the fees charged by the officer."

To the same effect is the opinion in the case of State v. Sailliard, 22 Wash. 267, where the court in discussing the constitutional prohibtion against the receipt by an officer of two fees for the same official service said at page 269:

> "These sections were intended to prohibit the Legislature, or other body having power to fix salaries or the compensation of public officers, from increasing or diminishing the salary or compensation of an officer when no duty is exacted of him except such as pertains to the office which he holds, and can have no application where the officer may be called on to perform a service for the State which is outside of the duty required of him by his office. In the latter class of cases an officer stands on a plane with other citizens of the State, and where he performs a service for the public not required of him by the duties of the office which he holds, he may exact the same compensa-

tion for his services that the law allows to any one for like services. As it is not shown that it is a duty pertaining to the office of policeman of the City of Spokane for a person holding that office to attend upon the Superior Court as a witness, the judgment of the lower court must be affirmed, and it is so ordered."

Yours very truly,
LAMAR FIELD,
Assistant Attorney General.

August 4, 1923.

Mr. J. D. Stewart,
Tax Adjuster,
Gadsden, Ala.

Dear Sir:

Your letter of July 31st addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You make the following statement and inquiry.

"The Alabama City Bank received their charter and commenced business about the 20th of last October. They also refused to make any assessment because they did not have anything in the State on October 1st. It has been our practice for three years to assess any corporation that started any time after the first of October for three-fourths of a year and, if later than that, one-half a year. Please write me at once about this matter so I can wind it up."

In answer will say that under the facts stated, no *ad valorem* tax assessment should be made against the Bank until the tax assessment year beginning October 1st, 1923, unless said bank brought into this State taxable property from another State or county before the Tax Assessor completed his assessments as provided by subdivision (n) of Section 5 of the Revenue Act 1919, and then only as to such property. The real and personal property now owned by said bank, which was in the State on October 1st, 1922, should be assessed to the person or persons who owned it at that time. The shares of capital stock owned by the stockholder will not be taxable until October 1st, 1923.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

August 10, 1923.

Hon. F. C. Marquis,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of August 9, 1923, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. Your letter is as follows:

> "Please refer to page 714, Section 11, Acts 1919, which Act requires a certain license on the manufacture or sale or other disposition of insecticides, fungicides or ingredients thereof, and define just what comes under the meaning of the above insecticides.
>
> "The license for such is issued as other licenses by the Probate Judge but has been more or less in the hands of the Commissioner of Agriculture for enforcement. Would the State Tax Commission be within its rights in requiring our License Inspectors to force the payment of this license tax under Section 366? The matter has been discussed with the Commissioner of Agriculture and is agreeable with him for this department to enforce the collection, he having no adequae machinery for enforcement. Please advise."

In answer to your inquiry will say that it is my opinion that the Legislature intended by said Act that the license provided for therein should be collected just as other licenses are collected and by the same officials. I am of opinion that it is entirely in accord with the intention of the Act for the State Tax Commission to enforce the payment of this license through the regularly appointed License Inspectors and that the same provisions as to fees, penalties and prosecutions should apply here as in other cases, except that the penalties on conviction are governed by this Act.

It is true that the first sentence in Section 3 of the Act under consideration provides "that the Commissioner of Agriculture and Industries is hereby authorized to enforce all the provisions of this Act through the Division of Foods, Feeds

and Drugs," but the remainder of this section clearly shows that the enforcement referred to is as to the prevention of adulteration of insecticides, etc.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 14, 1923.

Hon. C. B. Smith, Member,
State Tax Commission,
Capitol.

Dear Sir:

In Re: Franchise Tax of United States Cast Iron Pipe & Foundry Company for the year 1922.

The answer to the questions involved in ascertaining the basis for estimating the amount of said franchise tax, as requested by you, has been referred by the Attorney General to me for reply.

As we understand the report made by this company, as well as the statement of facts made by its attorneys, the facts are as follows:

1st. The United States Cast Iron Pipe & Foundry Company is a foreign corporation, organized under the laws of the State of New Jersey, with its principal administrative office in the State of New Jersey, from which several units are operated in different states, one of which is located in Calhoun County, Ala. In order to operate this unit in Alabama, said foreign corporation qualified to do business in Alabama.

2nd. At the end of its last fiscal year just prior to the calendar year, 1922, the balance sheet for the unit in Alabama showed the following items of assets:

(a)	Cash on deposit in this State in bank	$ 30,000.00
(b)	Accounts and notes receivable due by residents of Alabama	77,003.15
(c)	Accounts and notes receivable due by non-residents of Alabama	709,640.00

(d) Prepaid insurance	2,566.85
(e) Stock in domestic corporations	3,400.00
(f) Value of property assessed for taxation in Alabama	2,396,773.67
(g) Value of property in Alabama not assessed for taxation and other than items heretofore mentioned	298,794.69

Section 16 of the General Revenue Act of 1919, provides:

"That every corporation organized under the laws of any other State, nation or territory, and doing business in this State * * * shall pay annually to the State an annual franchise tax of sixty cents on each one thousand dollars of the amount of capital actually employed in this State."

Section 24 of said Act provides:

"That the franchise tax of foreign and domestic corporations as authorized and levied by this Act, shall run according to the calendar year," etc.

Where a foreign corporation has been, as in the case under consideration, qualified to do business and has been doing business in this State for a year or more before the year for which the tax is being assessed, it has been the practice with the State Tax Commission to get its data for assessment from the balance sheet of such corporation, for the business done in this State, as of the end of the last preceding fiscal year of such corporation, taking the status, at that time, as being truly representative of the condition of the corporation for the purposes of assessing the franchise tax for the next succeeding calendar year. This, in our opinion, is, as a rule, the most practical method of arriving at a determination of the amount of capital actually employed by such corporation in this State.

Of the items of assets heretofore listed in this opinion, counsel for the corporation make no objection as to items (a),

(b), (d), (e) and (g), being added in as part of the total upon which the levy is valued.

Counsel for the corporation objects to the inclusion of any part of item (c).

They claim that the following amounts should be deducted from item (f) and only the residue included, viz., a bonded debt of $650,000.00 secured by mortgage, we presume on the assessed property mentioned in item (f), the sum of $397,478.77 for accounts payable which represent an indebtedness for materials and supplies purchased for the Alabama plants, or, in finished products there located at the end of its fiscal year just preceding the calendar year 1922, the year for the assessment under consideration, and $595,000.00 the amount of bills payable.

As to each of these contentions of counsel for the corporation we are of opinion as follows:

1. The corporation being a foreign corporation with its principal administrative office in the State of New Jersey, where all accounts due it are payable, item (c) which represents accounts due by non-residents, is not capital actually employed in this State at the date selected for determining what amount of capital was actually employed in this State. This capital had no situs here at that time for any purpose whatever. It was not being used, at that time, for manufacturing or sale purposes in this State. It had no situs here, at the test time, for any purpose whatever. It was not owing by any one in this State. It was not payable to any one in this State. In our opinion it was not, at the test time, capital actually employed in this State. We, therefore, agree with counsel for the corporation that item (c) in amount $709,640.00, should not be added in as part of value upon which the franchise tax is assessed.

Item (f) as we understand the facts consisted of the plant and machinery located in Calhoun County, Ala. This plant and machinery was in operation as a manufacturing plant. The value of this plant and machinery was as stated in item (f). There was a bonded indebtedness upon this plant and machinery at the test time of $650,000.00. Counsel for the corporation insist that the only capital actually employed by the United States Cast Iron Pipe & Foundry Company, was the equity owned by said company in said property. They contend, as we

understand their brief filed with us in this case, that within the meaning of our statute and constitution with reference to the payment of a franchise tax by a foreign corporation, capital actually employed means capital stock actually employed and that so far as item (f) is concerned, only the value of the equity is capital stock, and that, therefore, only the value of this equity, which is obtained by subtracting the value of the bonds from the value of the property securing the bonds, can be added in as part of the assessed value upon which the franchise tax is to be calculated at sixty cents on the thousand dollars. We are unable to agree with counsel for the corporation in this contention for reasons now to be stated.

In providing for the levy by the Legislature of a franchise tax upon domestic and upon foreign corporations our constitution says as follows:

> "Section 229. * * * The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State, which shall be in proportion to the amount of capital stock;" etc.
>
> "Section 232. * * * The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this State."

These two sections of our State constitution are very near together and were, doubtless, considered at practically the same time and as related to each other. If the same meaning had been intended in both cases, we are persuaded the same term would have been used in both cases. If it was meant, when speaking of the franchise tax to be paid by foreign corporations doing business in this State, that it was to pay a franchise tax in proportion to the amount of "capital stock" employed in this State, it would have been easy to have so expressed it. The expression "capital stock" had just been used in Section 229 with reference to the franchise tax on domestic corporations, when the question of a franchise tax in Section 232 on foreign

corporations doing business in the State came up for consideration by the constitutional convention. It would have been just as easy, and perfectly natural, for the constitutional convention to have said the amount of "capital stock" actually employed in this State as it was to say the amount of capital actually employed in this State, if it was intended that the words "capital actually employed" should mean "capital stock actually employed." If the word "capital" was intended to mean "capital stock," it is, to us, inconceivable that the two expressions should have been used, in such close juxtaposition, instead of using the same expression in both. Why not have used the same expression in both instances, if the same meaning were intended in both?

We are fully persuaded that the two expressions "capital stock" and "capital" as used in Sections 229 and 232 of the constitution of Alabama were not intended to convey the same idea. Our Supreme Court defined the meaning of the expression "capital stock" prior to the framing of the constitution of 1901, and said constitution was written and adopted without this definition ever having been challenged or modified. *In re* Commercial Fire Insurance Co. v. Board of Revenue of Montgomery County, 99 Ala. page 1, headnote 1, we find the term "capital stock" thus defined:

> "The capital stock of the corporation is the sum fixed by the corporate charter as the amount paid in or to be paid by the stockholders for the prosecution of the business of the corporation, and is a trust fund for the benefit and security of the creditors of the corporation."

We are forced to the conclusion that the constitution of 1901 was framed and adopted with this meaning attached to the words "capital stock." It will be seen on reading the above definition that the capital stock of a domestic corporation is fixed by the charter, and, for purposes of assessing a franchise tax, does not vary by reason of losses suffered. A domestic corporation might be practically insolvent, the value of the shares of its capital stock worthless, still its franchise tax would not be changed in amount thereby.

Counsel for the corporation insist that the capital actually employed in this State by a foreign corporation, doing business in this State, is to be ascertained by deducting from the assets having a situs in this State, the debts of such corporation referable to the business done in this State. Under this contention a foreign corporation practically insolvent, though having large assets in this State and though doing an extensive business here requiring the use of valuable lands, buildings, machinery and much money, would not be due a franchise tax, while a domestic corporation similarly situated would have no deduction whatever in the amount of its franchise by reason of its indebtedness. We cannot agree with this view of the matter. We think the confusion of ownership with use and the attempting by counsel of the corporation to substitute ownership for use is the cause of such a view.

In the case of domestic corporations the original status of ownership governs. In the case of foreign corporations the amount of capital employed, and not the amount owned, governs. Under the facts heretofore stated, the plant and machinery worth $2,396,773.67 is capital actually employed in this State by said corporation, while said corporation owns only the equity in said property, which equity is worth $650,000.00 less than an unincumbered title to said property. The same is true with reference to the other debts which counsel for the corporation seek to have deducted from the value of the assessable property. This assessable property is all "capital actually employed in this State," and neither the constitution nor the statute provide for any deduction from the "amount of capital actually employed in the State." It was, in my opinion "capital" in this sense and not in the sense of "capital stock," that was intended by both the constitution and the statute.

We are, therefore, of opinion that the basis for estimating the amount to be assessed against the United States Cast Iron Pipe & Foundry Company should be the sum total of the values of the items named except the sum of $709,640.40 represented by accounts and notes receivable due by non-residents of Alabama.

Respectfully,

A. A. EVANS,

Special Assistant Attorney General.

August 16, 1923.

Hon. Geo. W. Ellis,
State Treasurer,
Capitol.

Dear Sir:

The Attorney General has requested me to investigate and answer your letter in which you inquire as to the validity of two treasury certificates or receipts, numbers 3657 and 4794 of $20.00 each, date May 1, 1867, and now presented for payment.

Article 1, Section 10 of the constitution of the United States prohibits a State from emitting bills of credit.

The Act under which these receipts or certificates were issued is as follows: "That the Governor of this State shall be, and he is hereby authorized, if the interest of the State shall in his opinion make it necessary, to have prepared and issued certificates and receipts, which shall be signed by the Governor and countersigned by the Comptroller of Public Accounts, of denominations not more than five hundred, nor less than five dollars; which certificates or receipts shall be substantially in the form following, to-wit:

_____ 187_____ No._____

Receivable as_____Dollars, in payment of all dues from the State.

_____

Governor.

_____

Comptroller of Public Accounts.

Section 2. That the said certificates or receipts prepared as aforesaid upon such paper, and with such devices as may be determined upon, shall be numbered and registered in the office of the Comptroller of Public Accounts, and paid into the State Treasury upon the warrant of the comptroller and shall be charged to the treasurer and entered upon his books, as certificate assets, and shall be paid out by him in all cases when practicable, in the payment of claims against the State; provided, that the amount of such certificates or receipts, shall not exceed four hundred thousand dollars; and, provided further, that if

a temporary loan is made, the amount of such loan shall be deducted from the said amount of four hundred thousand dollars.

Section 3. That the faith and credit of the State is hereby pledged for the receipts and redemption of such certificates or receipts as are provided for in this Act, and the same shall at all times, when presented, be received in payment of any taxes and dues to the State, and all Tax Collectors and all other public officers, shall receive them in payment for the amount they may call for on their face, in payment of all taxes and dues of every kind and description due and owing the State.

Section 4. That the means provided to be raised under this Act, shall not be used in the payment of any appropriation except such as are for ordinary expenses of the Governor, or to meet appropriation, for which no other provision is made." Acts of 1866-67, page 657.

The Supreme Court of Alabama, in the case of State v. Haston, Sims & Co., 44 Ala. 134, quotes approvingly the definition of the United States Supreme Court in Briscoe v. The Bank of Kentucky, 11 Peters 257, as follows:

> "To constitute a bill of credit, within the constitution it must be issued by a State, on the faith of a State, and designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life."

Another definition is found in John Darrington, et al., v. The Branch of the Bank of the State of Alabama, 13 How. page 12, as follows:

> "A bill of credit emanates from the sovereignty of the State. It rests for its currency on the faith of the State pledged by a public law."

In my opinion the purpose of the issue was to furnish a credit to the State until a temporary loan could be made, the amount of which was to be deducted from the $400,000 issue, and as bills of credit, they were issued in violation of constitutional provision above quoted.

The following authorities support the position that they are bills of credit and void:

Craig v. Missouri, 4 Peters 443. Confirmed in 6 Peters 40.
T. B. Lee, Jr., Plff. v. H. S. Robinson, Deft., 196 U. S. 64.
State ex rel Shiver v. Comptroller General 4 S. C. 183.
Auditor v. Treasurer, 4 S. C. 311.
Wesley v. Ellis, 90 Fed. 151.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

August 21, 1923.

Hon. C. C. Moseley,
Superintendent of City Schools,
Dothan, Ala.

Dear Sir:

In reply to your letter of inquiry on the following questions, to-wit: "If the corporate limits of Dothan are changed by the Legislative Act, will the new territory automatically become a part of the Dothan School District, and (2) does the Tax Assessor have the right to assess this property any time between now and September 30th, if we already have the special three-mill tax in Dothan District?" I beg to advise you that the Attorney General has referred the matter to me for investigation and answer.

I am of the opinion that, inasmuch as the educational bill makes provision for an affirmative vote by the electorate of a territory before the special school tax may be levied upon the property of the inhabitants, a change in the municipal boundary lines, does not authorize a change in the rate of, or manner of, imposing taxes for school purposes upon the property of this territory.

Section 10 of Article 5 of said school bill is as follows:

"The County Board of Education shall consolidate schools where in its judgment it is practicable, and arrange, if possible, for the transportation of pupils to and from such consolidated schools. But no schools shall be consolidated by consolidating two or more separate schools located in separate school districts, without consent of said separate school district trustees."

Article 8 of said Act places cities of over 2,000 inhabitants under the administration and supervision of the City Board of Education, while the administration and supervision of the public schools of a county, outside of said cities, is placed under the County Board of Education. The provisions of said Act, Article 8, Section 23, do not apply to cities in counties now having by law a city and county school system operated under a single Board of Education.

Article 19, Section 2 of the constitution in part is as follows:

"The several school districts of any county in the State shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such district for school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school districts now existing or hereafter formed, as may be approved by the County Board of Education."

The City Board of Education under Article 12, Section 1, may request the Court of County Commissioners or other governing body for an election to be held at the time requested to determine whether or not a special tax shall be levied for public school purposes, and said court shall order the election to be held at the time requested by said Board of Education.

Under the above stated provision, an election may be held in the new school district so created, to determine if the tax shall be levied. Until this is done, or until an election

is held under Section 5 of Article 12 of said Acts, it is my opinion that special school taxes may not be levied on the property in this additional territory.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

August 22, 1923.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol:

Dear Sir:

In accordance with your recent request to the Attorney General for an opinion as to the legal title of the following real estate, below described, I beg to advise that the matter has been referred to me by Hon. Harwell G. Davis, requesting that I investigate and advise you as to the same.

Mr. S. W. Compton, of Linden, has furnished this office with the following pertinent documents, and on which I base this opinion and advice, to-wit:

Minutes of the Town Council of Linden of October 19, 1910, authorizing the calling of an election in said town to authorize a bond issue of $10,000 for the purpose of building a school house in and for said town, to mature 10 years from the date. Notice of said election, issued October 20, 1910, election to be held November 21, 1910.

Minutes of said council of November 22, 1910, canvassing the returns of said election.

Minutes of said council of June 19, 1911, authorizing the council to purchase from Mrs. P. S. Howse the property known as the Cleveland place in Linden for school purposes, at a consideration of $3,500, $1,000 cash, and three notes for the balance of the purchase price.

Minutes of said council of November 6, 1911, authorizing the issue of $10,000, said bonds, for said purpose, said minutes providing: "That the faith, credit and property of

the Town of Linden are hereby irrevocably pledged to the punctual payment and interest of this bond according to its terms."

By said minutes it provides: "The mayor shall execute a deed of trust upon the land whereon the said school house is to be erected, conveying the said land and the building thereupon to be erected thereon, to a trustee for the purpose of securing the prompt payment of the principal and interest of said bonds. The said deed of trust shall contain all necessary and usual provisions that may be required to carry out the purposes of its execution."

Minutes of said Council of February 21, 1922, authorizing the issue of $8,000 refund bonds to take up present outstanding school bonds which amount to $8,000.

Minutes of said Council of March 7, 1922, authorizing the issue of said refunding bonds, to settle and refund the said $8,000 of outstanding bonds.

By section 4 it provides: "That upon the execution of the said bonds, the mayor shall be authorized and empowered to execute a deed of trust upon the land wherein the said school house is erected and the building thereon, conveying the said land and the building thereon to a trustee for the purpose of securing the prompt payment of the principal and interest of said bonds. The said deed of trust shall contain all necessary and usual provisions that may be required to carry out the purpose of its execution, and the same shall be attested by the Town Clerk, and the seal of said town shall be affixed thereto."

Affidavit of Irvin Adams that he is Town Treasurer of Linden and has been for several years, and the bonds issued in 1911 have all been paid, and no deed of trust has been made by said town on said property to secure said bonds.

Affidavit of G. W. Cunningham that he was mayor of said town from February 21, 1922, to October, 1922, and no deed of trust was made by said town on said school property.

Abstract to said school lands described in the abstract, and being all of Lot No. 57 and part of Lot No. 72 (as I understand from the map). This abstract traces the title through the following named persons, and conveyances and dates being as follows:

A. A. J. Riddle to Jas. S. Tate, Warranty Deed, March 10, 1873; Jas. S. Tate, single, to F. A. McNeill, Warranty Deed, March 22, 1875; F. A. McNeill, single, to C. B. Cleveland, Warranty Deed, Sept. 22, 1893; C. B. Cleveland and wife to Columbia E. McCoy, warranty deed, October 20, 1905; Columbia McCoy and husband to Pattie S. Howze, warranty deed, March 16, 1910; Pattie S. Howze, a widow, to the Town of Linden, warranty deed, June 5, 1911; Pattie S. Howze, a widow, to the Town of Linden, quit claim deed, August 10, 1923;

Town of Linden to T. E. Clancy, warranty deed, March 1, 1913, all lots bought of Mrs. Howze, except lots 57 and 72, as described on said abstract sheet;

Also the abstract contains conveyances to Lots 58 and 71 from C. B. Cleveland to W. S. Grant; W. S. Grant to H. R. Jones; H. R. Jones to J. J. Marion; W. S. Grant to J. J. Marion;

The abstract is certified by Mr. S. W. Compton, Atty.

Also, copy of bond of the Town of Linden dated December 1, 1921, due December 1, 1931.

The only reference to the property of the town in said bond is as follows: "That the faith, credit, revenues and property of the Town of Linden are hereby irrevocably pledged to the punctual payment of the principal and interest of this bond, according to its terms."

The abstract, and affidavits, convince me the legal title to this school land is in the Town of Linden, as no formalities of conveying the property have ever been carried out as provided by law.

See Sections 3355 and 3361, Code of 1907.

However, inasmuch as the Town of Linden, by its Mayor and Town Council agreed to execute a mortgage or deed of trust on the school property to secure the bonds, if the bond holders should require this to be done, it appears to me it would be the duty of said officials to execute and deliver said mortgage or deed of trust on said property. It is expressly held in Enslen et al. v. Allen, 160 Ala. 529, as follows:

> "Where, however, a conveyance has been made in fraud of the complainant's right to specific performance, the grantee being a party to the fraud, the transaction will be avoided, the fraudulent grantee divested of his title, and a

conveyance compelled in compliance with the grantor's contract."

The issue of the refunding bonds are authorized by the Acts of 1919, page 109, and the authority to execute a mortgage or deed of trust upon school property is found in Section 10 of the Act of 1909, page 188.

Taking into consideration the fact that the Town of Linden has issued $8,000 of refunding bonds, refunding the bonds of $10,000, originally issued and used to acquire the property now proposed to be deeded to the State, and the adoption of said ordinance authorizing the execution of a mortgage or deed of trust to secure said bonds, I suggest, in justice to the bond holders and the State before the State should acquire the property and expend money on improvements thereof, the State should require the execution of a bond, properly conditioned, with a surety company doing business in Alabama, in a sum in double the amount involved by the State, and prepared to protect the interest of the State.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

August 22, 1923.

Hon. C. B. Smith,
Member State Tax Commission,
Capitol.

Dear Sir:

Re: Franchise tax, American Cast Iron Pipe Co., for the year 1923.

Your letter in regard to the franchise tax of the American Cast Iron Pipe Company addressed to the Attorney General has been referred by him to me for reply. This letter has attached to it a brief by Cabaniss, Johnston, Cocke & Cabaniss, attorneys for the corporation, which raises the questions for opinion from this office.

This brief states the points at issue as follows:

(a) Does the term capital as employed in our statute include surplus? (b) Are the debts of corporations properly deductable in estimating the amount of capital employed in this State? (c) Should accounts receivable be included in the aggregate amount upon which the tax is computed?

Section 232 of the constitution of Alabama provides, in regard to foreign corporations, as follows:

> "The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporations, but such franchise tax shall be based on the actual amount of capital employed in this State."

The Legislature in carrying out the provisions of this requirement of the constitution by Section 16 of the Revenue Act of 1919, provided as follows:

> "That every corporation organized under the laws of any other State, nation or territory, and doing business in this State, * * * shall pay annually to the State an annual franchise tax of sixty cents on each one thousand dollars of the amount of capital actually employed in this State."

The authority for and the duty of assessing annual franchise taxes was placed by the Revenue Act of 1919, with the State Tax Commission. In order to ascertain as nearly as practicable the amount of capital actually employed in Alabama by a foreign corporation doing business in Alabama, the State Tax Commission adopted for its general method that of taking the amount of capital employed in this State at the date of the end of the last fiscal year preceding January 1st of the year for which the franchise tax is payable. This date was taken because the balance sheet made out by such corporation, as of that date, showed the location and situs of the capital employed by it, on that date, and this was taken as typical of the amount of capital employed by said corporation, and where employed. No other time could be used without extra expense and trouble to such

corporation in making a satisfactory return for assessment as required by the law. In our opinion this was as a rule, the best and most practical method of return and assessment that could be adopted. Any reason for not using this method in any special case could be shown either by the corporation or the State Tax Commission. It happens that in the case under consideration the fiscal year ended on December 31, 1922, the day before the beginning of the franchise tax year, at which time the tax was assessable. So said date seems to be especially fitting in this case.

The American Cast Iron Pipe Company is a foreign corporation organized under the laws of the State of Georgia. Its only place of business is in Alabama. All of its business is done from its office in Alabama. This does not, in our judgment, mean that all of its capital is necessarily employed in Alabama within the meaning of our franchise tax law. According to the return made by the corporation, as of December 31, 1922, the end of its fiscal year, just preceding the franchise tax year, 1923, the status of its assets was as follows:

Item 13. Cash on hand and on deposit in Alabama	$ 91,144
Item 14. Accounts and notes receivable due by residents of Alabama	106,083
Item 15. Accounts and notes receivable due by persons not residents of Alabama	952,546
Item 16. Account of prepaid insurance	2,931
Item 19. Book value property assessed for taxation in Alabama	1,505,250
Item 21. Value of products manufactured in Alabama in the hands of agents or in warehouses or storage outside of Alabama	52,782
Item 22. Value of other assets in Alabama not enumerated above	376,048

Which then, of these values must be included in fixing the amount of capital actually employed in this State on December 31st, 1922, the date taken as a test date of the amount of capital actually employed in this State?

According to the brief of attorneys for the corporation the authorized capital stock of the corporation is $500,000.00; it has a surplue of $1,700,000.00; accounts receivable, $400.00; it owns accounts, $750,000.00. In this brief it is insisted that the words "amount of capital actually employed" mean the "amount of capital stock actually employed;" that, therefore, surplus employed could not be included in the amount upon which the franchise tax is based. Hence, since the amount of capital stock authorized is only $500,000.00, this would make the limit of the amount of capital, in this case, that could be actually employed in this State. In support of this view attorneys for the corporation, in their said brief, cite the following cases:

State v. N. & W. R. Co., 30 Conn. 290.
Christensen v. Emo., 106 N. Y. 97.
Iron R. Co. v. Lawrence F. Co., 4900, St. 102.
Reid v. Eatonton Mfg. Co., 40 Ga. 103.
Commonwealth v. C. P. B. & L. Co., 90 Va. 790.
Sun Mutual Ins. Co. v. New York, 8 N. Y. 240.

We have read each of these cases with care and are of the opinion that they throw no light upon the case under consideration. The facts are different and the matter to be decided was different from anything we are considering. It has been uniformly held by this office, the Alabama Supreme Court not having passed upon the matter, that the meaning of the words the "amount of capital actually employed in this State" is its natural and most obvious meaning. The word *capital* as here used is without limitation except that it shall be actually employed in the State. If the makers of the constitution or the Legislature had intended that it should mean "capital stock," they would doubtless have said so. The franchise tax of domestic corporations is based upon the amount of "capital stock" owned by the corporation as provided in its charter, without regard to how much is employed in this State, while the franchise tax of foreign corporations doing business in this State is based upon the amount of capital actually employed by it in this State; the question of whence the capital employed comes "cuts no figure in the case." It was doubtless intended to measure the extent of the business

done. Assets of the corporation actually employed in the State are capital within the meaning of the constitution and the statute. The word "capital" as here used has its broadest possible sense; it is not limited to capital stock or the amount ventured, it means everything of value actually employed in this State, regardless of its source or ultimate destiny.

Hence, we conclude that if surplus is actually employed in this State, it is capital actually employed in this State within the meaning of our franchise tax law; that the debts due by the corporation are not to be subtracted from the capital actually employed, because neither the constitution nor the statute so provides; that accounts receivable due by residents of this State are to be included; but that accounts and notes receivable due by non-residents of this State are not capital actually employed in this State, and are, therefore, not to be included in estimating the amount upon which the franchise tax shall be assessed.

The foregoing answers all the questions propounded. We are of the opinion that according to the return made by the corporation, the following amounts should be included upon which to assess the franchise tax:

(a)	Cash on deposit in Alabama	$ 91,144.48
(b)	Accounts and notes receivable due by residents of this State	106,083.96
(c)	Prepaid insurance	2,931.45
(d)	Value of property assessed for taxation in Alabama	1,505,250.30
(e)	Value of other assets in Alabama not above enumerated	376,048.01

There should be excluded from the calculation among the items shown by the return, the following:

(a)	Accounts and notes receivable due by persons not residents of Alabama arising from shipments or sales of products manufactured in Alabama	$ 952,546.57
(b)	Products manufactured in Alabama in the hands of agents or in warehouses outside of Alabama	52,782.09

Interest on the assessment should be included. As to penalty, we do not know the facts which would control as to that.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

August 27, 1923.

Hon. R. T. Sirmon,
Judge of Probate,
Luverne, Ala.

Dear Sir:

Your letter of August 9th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. The facts underlying your inquiry, I gather from the letter of Mr. J. C. Landers attached to your letter, to be as follows:

In June or July of this year, Mr. J. C. Landers purchased a sawmill from a party in this State who had taken out a license to operate this mill for the license year ending September 30th, 1923. Mr. Landers is now operating this mill in Crenshaw County. You wish to know if the law requires that he take out a license in order to legally operate this mill.

In answer to your inquiry, will say that all such matters are governed by the statute law upon the subject, which is very plain and has been passed upon by our Supreme Court in language that is very plain and easily understood.

The license is not to the sawmill, but to the one who operates the sawmill. The one to whom the license is issued, if his mill were destroyed, might buy another mill of no greater capacity, set it up, in the same place, and operate it without getting another license. The sale of the mill does not transfer the license. The holder of the license can still purchase another mill of no greater capacity, set it up in the place where his mill formerly stood and operate it under his license.

Section 363 of the Revenue Act, 1919, is in part as follows:

> "* * * and such license shall not be *transferable,* nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, *nor at*

any other location than that therein specified. Provided, that in case it should become necessary to remove any business for which a license is required by this section, from one location to another in the same city or town, and such business be continued as the same kind or character and *by the same person or firm* as that carried on at the former location, another license shall not be required for such business for the same license year."

You will see from the foregoing that the license to operate the sawmill held by the first owner could not be transferred by him to the second owner, and such second owner would have to take out license in order to operate it. You will further see from reading said section in speaking of the issuance by the Judge of Probate, of a license to any person, firm or corporation, the following:

"* * * Such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the State Auditor, which shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or to do thereunder, the name of the street or location where it is proposed to carry on the same, if such location be in a city or town and have a street number, *and if not then the location,* and the amount paid for such license, and the time for which it is issued."

It is plain from the foregoing quotations from Act of 1919, 1st, that license is issued to the person and not to the business or machinery; 2nd, that the license is not transferable, except in cases otherwise specifically provided, as is the case with motor vehicles, but not with sawmills; and 3rd that the license is to carry on the business at the place named in the license, except that the business may be changed from the place named in a city or town to another place in the same city or town.

The following Alabama cases sustain the foregoing construction of the statute:

Southern Car Foundry Co. v. State, 133 Ala. 624.
Foshee v. State, 15 Ala. App. 115.
Power v. State, 69 Ala. 10.
Jones v. Motley, 78 Ala. 370.

As to whether or not this is the way the law should be, is a question for the Legislature to decide. In passing the law as it now stands, the Legislature evidently thought what it did was proper.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 30, 1923.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Ala.
Dear Sir:

In Re: *License Columbus Bottling Co.*

Your letter addressed to Hon. Harwell G. Davis, Attorney General, in regard to the Columbus Bottling Company taking out State license as wholesale soft drink dealer in Lee County, having attached thereto letter to you from Hon. N. D. Denson, has been referred by the Attorney General to me for reply.

You state as follows:

"I am enclosing a letter written by Judge N. D. Denson in regard to the Columbus Bottling Co. taking out State license as wholesale soft drink dealers in Lee County, Ala. The only question is, as to whether or not they are due a State and county license in every county in which they do business, they applied to me last October for a county license and I issued the same, for which they paid me $25.00. You will see from Judge Denson's letter, their contention is that they will only have to pay one license in the State and that on the payment of county license in the other counties they can do business."

In answer to your inquiry will say as follows:

Section 361 of the Revenue Act of 1919, provides as follows:

> "That every person, firm, company, corporation or association engaged in any business, vocation, occupation, calling or profession hereinafter enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a license and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this Act."

Schedule 96 1-2 of Section 361 of the said Revenue Act provides as follows:

> "WHOLESALE SOFT DRINKS — Each person other than bottlers operating plants in this State who are otherwise licensed, engaged in the business of selling at wholesale non-alcoholic carbonated or other soft drinks, shall pay an annual license of fifty cents."

Section 363 of said Revenue Act in speaking of licenses issued by the Judge of Probate, among other things, states as follows:

> "* * * and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor at any other location than that therein specified. Provided, that in case it should become necessary to remove any business for which a license is required by this section, from one location to another location in the same city or town, and such business be continued as the same kind and character and by the same person or firm as that carried on at the former location, another license shall not be required for such business for the same license year."

It will be seen from the foregoing that unless otherwise specifically provided, by law, a license issued must state the loca-

tion where the business is to be carried on, "if such location shall be in a city or town and have a street number, and if not, then the location," etc. The foregoing all has reference to the State license. You will readily see that a license to sell soft drinks at wholesale must state the location where the soft drinks are to be sold. You have no authority to issue a license which permits the sale of soft drinks everywhere in the county. A separate State, as well as county license must be taken out for every location where such soft drinks are to be sold at wholesale. There is no provision to be found anywhere in the law, which exempts dealers in soft drinks from this provision of Section 363 of the Revenue Act of 1919. Not only must this license be paid for the State, as well as the county, in every county where such sales are made, but at every place where such sales are made. In such cases as this, the article permitted to be sold cannot be peddled, it can be legally sold only at the location named in the license. Nothing can be peddled for which there is a specific license which is governed by the provision of said Section 363 as to being sold at a location to be named in the license.

As to county licenses, Section 362 of the Revenue Act of 1919, controls, unless otherwise specifically provided by statute.

Under a peddler's license, nothing can be sold for which a specific license is otherwise required.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 30, 1923.

Hon. J. E. Jordan, Mayor,
Sylacauga, Ala.

Dear Sir:

Your letter of August 17th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You ask to be advised as to whether or not it is optional with your city to have your City Tax Collector collect the three-mill school tax, or if same must be collected by the County Tax Collector?

You fail to state the population of your city, but I find from the Federal Census, 1920, that you have a population of more than two thousand inhabitants, viz., 2,141. Your confusion upon the subject arises doubtless from the fact that one man looks at one statute and another man at another statute, thus causing disagreement on the subject. Section 8 of an Act approved February 13, 1919, page 63, Acts 1919, provides that the Tax Collector of the county shall collect this three-mill tax, while Section 8 of Article 12 of an Act approved September 26, 1919, page 613, Acts 1919, contains the following provision:

> "* * * * provided that the funds arising from levying the special tax for school purposes in any school district shall be used for the exclusive benefit of the public schools of such district, and in case of cities of two thousand (2,000) or more inhabitants, according to the last or any succeeding Federal Census, *the City Tax Collector, unless otherwise provided by law, shall collect* and pay over the same to the treasurer of such city," etc.

In our opinion this last Act controls, and requires the City Tax Collector to collect in cities having more than two thousand inhabitants, according to the last preceding Federal Census.

We, therefore, advise that, for Sylacauga, the district three-mill tax must be collected by the City Tax Collector. However, if it is desirable to have the County Tax Collector collect the city taxes including the three-mill tax, this can be done by following the provisions of Section 239 of the Revenue Act, 1919, on page 352 of Acts 1919.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 31, 1923.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, Ala.

Dear Sir:

In reply to your letters of August 17th and 25th, in which you request an opinion from the Attorney General, as to the validity of the vehicle license tax imposed by the rules and regulations adopted by the Court of County Commissioners of your county, I beg to advise you that the Attorney General has requested me to pass upon the validity of the same.

I have examined the copy of the rules and regulations enclosed by you, and find the same in no way applies to motor vehicles used by the owner for his private use and that of his family.

In this, the rules and regulations conform to the decisions of the Supreme Court in the following cases:

Hill, et al. v. Moody, Probate Judge, et al., 207, Ala. 325.

Mills v. Court of Commissioners, 204 Ala. 40.

The Court of Appeals, and the Supreme Court, in several cases have passed upon, and declared valid the Acts conferring powers upon the Courts of County Commissioners and Boards of Revenue to adopt such rules and regulations as here submitted.

See the authorities referred to in the above cases.

Whether or not owners of vehicles living in incorporated cities and towns in your county, are subject to pay the said license tax on such vehicles, I beg to advise you that in the original Act, the license tax may be imposed upon the owners of vehicles which are used upon the public roads of the county. Acts 1915, page 573, Section 13.

Your rules and regulations were adopted prior to the amendment approved February 13, 1923. (Acts 1923, page 61.)

This amendment supersedes Section 13 of the Acts of 1915, and authorizes the imposition of a license tax upon the "owners of all vehicles (certain exceptions) which are used upon the public roads of a county."

In this there is no practical change from the Acts of 1915. The fact of residence within the corporate limits of a city or town, of the owner of a vehicle will not exempt such owner from the payment of such license tax, provided such owner uses such vehicle upon the public roads of the county. All owners of vehicles using the same upon the public roads of your county, are entitled to pay the license tax upon such vehicles imposed by your rules and regulations which so far as I find, do not attempt to legislate upon either the subject of streets or inhabitants of the cities and towns of your county, but only upon the "owners of vehicles which are used upon the public roads of DeKalb County."

The fact that Section 15 of Part 2 of your rules and regulations, provides that one-third of the license taxes collected from owners of vehicles residing within the corporate limits of an incorporated town or city shall be expended upon the streets within the corporate limits of said town, does not mean that the Court of County Commissioners is attempting to collect a license tax from all owners of vehicles in the incorporated towns and cities, but merely directs the application of the license tax which is collected from the owners residing in the municipalities and using the public roads. In fact, under the said rules and regulations, as submitted to this office, there is no attempt to collect a license tax from a vehicle within an incorporated town, but only upon the owners of vehicles using the same upon the public roads of the county. This, in my opinion, the county has a right to do. The owner of any vehicle using the same upon the streets of a town or city, in your county, is not subject to pay the license tax, unless said owner uses the same also upon the public roads of your county.

Hoping the above answers fully the questions upon which you desired information from this office, I am

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

September 7, 1923.

Hon. Harwell G. Davis,
Attorney General,
Capitol.

Dear Sir:

I have your memorandum reading as follows:

"A Probate Judge of this State was checked by an examiner of accounts and found to be short in approximately the following amounts:

$4,500.00 due the State of Alabama.
$4,000.00 due to the county.
$3,250.00 due to the municipalities in the county.

The bond of a Probate Judge is in the amount of $5,000.00. The bonding company wishes to pay this bond.

QUERY—Has the State any preference over the county and the city? Will the bonding company be released for the amount paid to the State if it pays all of the State's claims? What steps should the bonding company take to protect itself and at the same time make payment of this bond?"

Code of 1907, Section 5413, provides that the bond of the Probate Judge must be for not less than $5,000.00.

Code of 1907, Section 1483, provides that the bond shall be made payable to the State, with condition to faithfully discharge the duties of his office during the term he continues therein or discharges any of the duties thereof.

Code of 1907, Section 1500, subsections (3) and (4) provides that every official bond is obligatory on the principal and surety, (3); "for the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office as by his faliure to perform, or the improper or negligent performance of those duties imposed by law;" (4) "The words 'for the use and benefit of every person injured,' as used in subdivision three, shall include any persons having a direct and proximate interest in the official act or omission, and all persons connected with such official act or omission by estate or interest."

"The word 'person' includes a corporation as well as a natural person." Code of 1907, Section 1.

Code of 1907, Section 1491, the bond is a lien upon the property of the Judge of Probate.

Code of 1907, Section 1504, the bond is not discharged by a single recovery.

Code of 1907, Section 1515, venue for actions on such bonds may be in the county of the residence of the principal, or in which he resided at the time of the execution of the same, but suits by the State may be brought in Montgomery County.

Surety paying the penalty of the bond is subrogated to the rights of the obligee.

Knighton, et al. v. Curry, et al., 62 Ala. 404.
Watts v. Eufaula National Bank, 76 Ala. 474.

The State, county or city may sue on the bond.

American Bonding Co. of Baltimore v. New York & Mexican Whiting Co., 11 Ala. App. 578, 591.
Dudley v. Chilton County, 66 Ala. 593.

I quote as follows from the case of American Bonding Co., of Baltimore v. New York and Mexican Whiting Co., supra:

> "The bond required by Section 4909 of the Code is therefore in every sense an official bond, and within the provisions of Section 1500 of the Code, and is obligatory on the principal and sureties thereon: '(1) For every breach of the condition during the time the officer continues in office, or discharges any of the duties thereof. (2) For the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein. (3) For the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office as by failure to perform, or the improper or neglectful performance of those duties imposed by law.'

"The statute prescribes the form and conditions of officials' bonds, and it is immaterial that such bond is not in the form prescribed by the statute. If it is tendered and accepted as an official bond, the court will read into it the provisions prescribed by law and give it the form and effect of an official bond, regardless of its contents. S. F. & G. Co. v. Union Trust Co., 142 Ala. 532, 38 So. 177; Code, Sections 1501, 1502, 1503; Ex parte Martin, supra; Mobile County v. Williams, Judge, etc., 180 Ala. 639, 61 So. 963."

A debtor may discharge his debt by payment to one of several joint obligees.

Bank v. U. S. Fidelity, etc., Co., 75 So. 168.
Peck v. Lampkin, 75 So. 580.

Under the Code of 1907, Section 6050, the surety company could, if sued by the State, county or city, suggest the other two as claimants and require that they be brought into the case by interpleader and required to interplead.

Under the legal principles set forth above, I am of the opinion:

First, that neither the State, county nor city has any preference over the other two, but the provisions of Section 1500, subsection (3) and subsection (4) put all of them on an equal basis, so far as the right of recovery is concerned, to the same extent as if the county and city had been named, along with the State, as the obligees in the bond, and each has a right to sue in its own name. Dudley v. Chilton County, supra.

Second, the bonding company will be released for the amount paid to the State if it pays all of the State's claims, under the ruling made in Bank v. U. S. Fidelity, etc. Co. and Peck v. Lampkin, supra.

Third, the steps to be taken by the bonding company to protect itself and at the same time make payment of the amount of the bond are:

(1) Pay the amount to the State, taking the receipt therefor from the State.

(2) Have suit filed by one of the parties and pay the money into court, having the other two parties substituted as defendants in its place.

(3) Pay the amount to the State, obtaining the joint receipt of the State, county and city.

(4) Obtain the joint written consent of the State, county and city that the money may be paid to the State and disbursed by it.

(5) Obtain the joint consent in writing of the State, county and city that a certain sum of money be paid to each, and make such payments, taking proper receipts from each for the amount paid.

Yours very truly,
LAMAR FIELD,
Assistant Attorney General.

September 12, 1923.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Ala.

Dear Sir:

Your letter of August 31st addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. The facts upon which you ask an opinion are as follows:

Since April 1, 1923, the Southern Construction Company, of Pensacola, Fla., has accepted a contract to build a Sunday school room in Selma for the price of $69,000.00. You wish an opinion as to whether or not Section 377 of the Revenue Act of 1919, applies in this case. That is, is the license to be just half what it would have been had the contract been accepted before April 1st.

Section 377 so far as material to this inquiry reads as follows:

> "If any business licensed by this Act shall commence after the first day of April in any year, the amount of the license shall be one-half the *year's* license. In all other

cases the license shall be taken out for the full term of one year, unless a shorter term is fixed by the provisions of this Act."

Answering the question propounded by you is not free from difficulty. Schedule 34 of Section 361 of the Revenue Act, 1919, is, in my opinion, predicated upon the acceptance of a contract or contracts and not upon the the performance of the work contracted to be done. Under this schedule a person might, in my opinion, accept a contract on September 30th to do work of a kind named in Schedule 34, at the price of ten million dollars, and it might require several years to do the work contracted to be done, still, he would be required to pay only the license required at the date of accepting the contract. Under Schedule 34 a license is required on acceptance only of the contract or contracts. The license, in our opinion, is on contracting and not on the performing of the work contracted to be done.

The schedule begins with a definition of the word "contract," which definition is as follows:

"Any person, firm or corporation accepting orders or contracts for doing any work on or in * * * shall be deemed a contractor."

It seems clear, then, that it is the *accepting* of orders or contracts to do a kind of work, mentioned in the schedule, and not the performing of the work contracted to be done, which determines the question as to who is a "contractor" within the meaning of Schedule 34.

After defining what constitutes a "contractor" within the meaning of the schedule, said schedule then proceeds to levy the tax in the manner following:

"Every such contractor shall pay a license to be ascertained in the following manner: If the gross amount of orders or contracts accepted aggregate five thousand dollars and not exceeding ten thousand dollars, he shall pay the sum of ten dollars; If * * * ; and when such contractor shall have obtained a license for any year for which he has

paid a license tax less than the maximum above prescribed, he shall not *accept any contract or contracts during such year, the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license."*

A careful reading of the foregoing provisions of said Schedule 34 will, we think, reveal the fact that it was the legislative intent to levy the tax upon *accepting* certain kinds of contracts, and not upon the performance of the work contracted to be done. If this is the correct view, and we think it is, then where no contract is accepted, during any tax year, no license is required under the provisions of said Schedule 34. "If "A" accepts a contract from "B" to do for "B" certain work, of a kind mentioned in Schedule 34, at the price of $69,000.00 and then sublets this contract to "C" for $65,000.00, both "A" and "C" would in our opinion, be required to take out a license under Schedule 34, though only "C" would do the work contracted to be done. If the license were levied upon the performance of the work "C" only would be required to pay a license. It, therefore, follows, logically speaking, that where a person does not accept a contract of the kind mentioned in said Schedule 34, during any tax year, he is not required under the provisions of said Schedule 34 to take out a license during such year, although he may be then performing work under a contract accepted during the preceding tax year.

This view is further strengthened by a consideration of what amount of license would be required for the subsequent tax year. What basis of estimate could be used? Would it be the amount of the original contract price, or would it be the proportionate value of the work remaining to be done? There is nothing, so far as we can see, provided in the schedule upon which the license tax for the tax year subsequent to the tax year in which the contract was *accepted,* could be calculated.

We come now to consider the question as to whether Section 377 of the Revenue Act, 1919, has any application in a case like the one under consideration. Section 377 says: "If any business licensed under this Act shall commence after the first day of April in any year, the amount of the license shall be one-half of the year's license." A license which is not a license for a *year,* but is a license upon an act or acts which may exhaust the license within a week, a month or any indefinite period, is not a license for a tax year. Only that class of licenses which, when issued prior to April 1st, are licenses for a *year* fall under the provisions of this section. There are many schedules which are not affected by said Section 377. Among these are schedules 26, 27, 28, 33, 51, 64, 68 and 71; and Schedule 53 to limited extent only. In Schedule 53 said Section 377 would apply only where the license was issued for half year, not where issued for a week or a month. Take Schedule 71, and we think it makes no difference whether the mortgage is filed before or after April 1st, the tax being based, not upon time, but upon the amount of the debt secured. So in the schedule under consideration, there is no license which can be considered as a license for a year except where the license paid is two hundred and fifty dollars for the year. Even then many difficulties arise where part of the contracts are accepted before April 1st and others after April 1st. The schedule seems to demand the full payment of two hundred and fifty dollars whenever the gross amount of contracts accepted exceed two hundred thousand dollars no matter when the sum total for the tax year reaches that amount. The language used is as follows:

> "If the amount of such orders or contracts exceed two hundred thousand dollars, two hundred and fifty dollars; and when such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above prescribed, he shall not *accept* any contract or contracts *during such year,* the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as above prescribed."

It would seem to make no difference whether the additional contract or contracts, which bring the gross amount of contracts accepted during the tax year above two hundred thousand dollars, were accepted before or after April 1st.

Again, suppose a person takes out a license for a ten thousand-dollar contract on October 1st, and performs this contract within the month, no other contract can be taken under this license; a new license must be obtained before another contract can be accepted. What difference can it possibly make whether such a contract is accepted before April 1st or after April 1st? It may be called in the schedule a license for a year, but facts and not names must control. Such a license is no more a license for a year than is a license for a concert, musical entertainment or public lecture under Schedule 33. It is *functus officio* the moment it is taken out. Such person has to take the license to accept the contract and as soon as he accepts the contract the license is *functus officio*. It is not in fact a license for accepting contracts throughout the year, but simply for contracts amounting in the gross to ten thousand dollars. Such being the case with licenses obtained under Schedule 34, we are of the opinion that it is not affected by the provisions of Section 377.

We are, therefore, of opinion that the Southern Construction Company was due a license for accepting the contract as provided by said Schedule 34, and that Section 377 does not apply.

It is impossible here to go into all the difficulties one may encounter in attempting to make Section 377 apply to Schedule 34 or to the inequalities and injustices that would be created by such an interpretation. We feel sure, however, that in the case under consideration, viz., the acceptance of a contract for $69,000.00 to do work of a kind mentioned in Schedule 34, it can make no difference whether such contract is accepted before or after April 1st.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

September 14, 1923.

MEMORANDUM OPINION

In response to the following query:

The bill relative to the Military Department fixes the salary of the Adjutant General at $4,000.00 per annum. Can the present Adjutant General draw this increased compensation? The bill also provides for salaries of other members of that department and states that a salary shall not exceed a certain amount. How is this salary determined in such instance? When do all salaries take effect?

The bill above mentioned was approved September 6, 1923.

Section 8 thereof provides "The Adjutant General of the State shall receive a salary of $4,000.00 per annum."

> "The Adjutant General may have to aid him in this discharge of his duties, three assistants, one at a salary not exceeding $2,400 per annum; one at a salary not exceeding $2,000 per annum, and one at a salary not exceeding $1,500 per annum, who shall be officers or enlisted men of the National Guard of Alabama and who shall perform the following respective duties: United States Property and Disbursing Officer; assistant to the Adjutant General; and Assistant to the United States Property and Disbursing Officer and Military Storekeeper, and such other duties as the Adjutant General may require of them. All of whom shall be appointed by the Adjutant General with the approval of the Governor."

This is an Act relating to the military of the State, and the Adjutant General, by said Section 8 is declared to be "Chief of Staff and ex-officio chief of all staff departments." He shall supervise all troops, arms and branches of the militia."

To aid him in the discharge of his duties, said section gives him an "Assistant Adjutant General" at a salary of $3,000 per annum, and three assistants whose titles are set forth above. The above mentioned amendatory Act is allowed by Article XV of the Constitution of 1901.

In Clark v. State, ex rel Graves, 177 Ala. 188, Justice Somerville deals with and treats the office of Brigadier General as a general office of the militia, and the same as distinguished from a "civil office." Therefore, it is my opinion that the office of Adjutant General, under said Act, is not a civil office, and that Section 281 of the constitution of 1901, does not apply.

Said section prohibits an increase or diminishing of the salary, fees, or compensation of any officer holding any *civil office* of profit under this State, during the term for which he he shall have been elected or appointed.

Presupposing the Adjutant General under the amendatory Act was the Adjutant General prior to the amendment, and increase of salary, it is my opinion that no section of the constitution denies him the right to accept the provided increase.

The Act provides other officers and employees shall be paid a salary not exceeding a specified maximum, all of whom shall be appointed by the Adjutant General with the approval of the Governor.

This leaves the salary to be determined by and between the employer and employe, but not to exceed the stipulated amount named in the Act.

Section of this Act, numbered 36, makes certain acts violations of law, declares the same misdemeanors, and provides for punishment. To this extent the Act is penal.

See Ross v. New England Mortgage Security Co. 101 Ala. 366.

Section 7805 of the Code of 1907 is as follows:

"No penal Act shall take effect until sixty days after the approval thereof, unless otherwise specially provided in the Act."

In the case of Olmstead v. Crook 89 Ala. 228, the Act under the consideration of the court contained penal clauses, and was silent as to the time the same took effect, but contained a provision that the Act should not take effect till after April 30, 1887,

depending on an affirmative election by the voters of Calhoun County.

The opinion of the court applicable is as follows:

> "Whether the Act should take effect at all, was dependent upon the wishes of the people, ascertained by an election; and though the result might be in favor of prohibition, the fifth and sixth sections, which constitute the penal parts, could not have taken effect until after the 30th day of April, 1887. * * * By the terms of the Act, the sections providing and regulating the proceedings for ascertaining the will of the people, and the punitive sections took effect at different times. By prescribing a different time for the penal sections to take effect, the Act is exempted from the operation of Section 4448, and the first four sections, under the *general rule,* took effect from the date of its approval by the Executive."

The general game law (Acts 1907, page 81) contained no special provision making Section 44 effective upon its approval or at any fixed time. The Act made some of its penal sections effective upon approval. Section 44 became effective as a penal statute, 30 days after the adjournment of the Legislature.

See Glenn v. The State, 158 Ala. 44.

This present Act in my opinion, was effective from and including the day the same was approved by the Executive, except the penal sections of said Act are postponed until sixty days after approval.

> See the authorities cited in Vol. 11 of Michies Enc. Dig. of Ala., page 1119, Section 177.

Section 8 of said Act provides for appointment, and the giving of bond by the officers. Until this is done, there is no officer, entitled to pay, under said Act.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

September 21, 1923.

Mr. T. F. Pitts,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of September 12th with letter of Mr. F. M. Sheehan, Tax Adjuster of Houston County, attached, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

The facts upon which your inquiry is based are as follows: Mr. F. M. Sheehan has been the duly appointed, qualified and acting Tax Adjuster of Houston County for the past year or more. Houston County has property assessed at a valuation of more than eleven million dollars and not more than fifteen million dollars. The Commissioners' Court of Houston County, prior to February 1st, 1923, adopted a budget system under the Act approved September 25th, 1919, and failed to provide in its budget for the payment of the county's part of the salary of the Tax Adjuster. The Court of County Commissioners has failed to issue to said Tax Adjuster its warrant for the county's part of his salary since February 1st, 1923, upon the ground that the payment of same was not provided for in its budget.

You wish to know if the Commissioners' Court can legally refuse to issue to Mr. Sheehan the warrant for the county's part of his salary upon the ground that no provision was made therefor in said budget; and if the warrant is issued, can the County Treasurer refuse payment on that account?

Section 82 of the Revenue Act, 1919, provides "that the compensation of such County Tax Adjusters shall be as follows. * * * * ; in counties having an assessment of more than $11,000,000 and not more than $15,000,000, according to the last preceding assessment, $2,400.00 per annum. * * * That said salaries shall be paid monthly, one-half by the State on the warrant of the State Auditor, and one-half by the county, out of the general funds of the county, on warrant of the Court of County Commissioners or other court of like jurisdiction, and the same shall be a preferred claim against the funds of said county."

Section 1 of the Act approved September 25th, 1919, Acts 1919, page 722, authorizing a Court of County Commissioners to adopt a budget system, is as follows:

> "That Courts of County Commissioners, Boards of Revenue or other governing bodies of counties shall have authority to adopt a budget system for the conduct of the affairs of the county and to this end to appropriate from the County Treasury sufficient funds to pay the actual expenses of the county as shown by the budget so adopted."

There are three other sections of said Act, but neither of said three other sections have the remotest connection with the question propounded. What interpretation, then, must be given to said Section 1 as bearing upon the question propounded? The Court of County Commissioners of Houston County seems to have interpreted Section 1 as giving to the said court authority to adopt just such budget as it pleases, unrestrained by any law, and "to appropriate from the County Treasury sufficient funds to pay the actual expenses of the county *as shown by the budget.*" If we have correctly interpreted the view taken by the Court of County Commissioners, we are of the opinion that the view so taken by the said court is erroneous. In our judgment the actual governmental expenses of the county must be contained in the budget and that as to such, the Commissioners' Court has no discretion. It cannot, in our opinion, avoid the payment by the county of money due by it for current governmental expenses by simply leaving such matters out of the budget. The budget must provide for the payment of the actual governmental expenses of the county or else it is not such a budget as is provided for by the Act.

Again the Act of 1919, Acts 1919, page 722, authorizing a Court of County Commissioners to adopt a budget system is simply an affirmation of the law as it existed before the passage of this Act. It gave to the Commissioners' Court no authority or power that it did not have already. It did not relieve the county from any obligation that before existed, nor did it relieve the Commissioners Court of any duty already placed upon it by law. In the case of Rhodes v. Marengo County Bank, 205 Ala., 669, our Supreme Court says:

"In Section 1 of the Act of September 25, 1919 (Acts 1919, page 722), it was provided that Courts of County Commissioners, Boards of Revenue, and other governing bodies of counties, should have authority to adopt the 'budget system' for the conduct of county affairs, and to that end appropriate from the County Treasury 'sufficient funds to pay the actual expenses' as shown by the budget so adopted. With or without this declaration of legislative purpose it was competent for Commissioners' Courts and Boards of Revenue, if necessary or expedient in the exercise of that part of the sovereign legislative and administrative power of the State previously committed to them, to adopt the 'budget system,' and to apply the whole revenues in each year to current governmental county expenses, leaving nothing to be applied in payment of old debts. White v. Decatur, 119 Ala. 476, 23 So. 999."

We are of the opinion that it will not, and cannot, be successfully disputed that the expense of assessing taxes is a government expense and that the budget adopted must provide for the payment of governmental expenses. A Tax Adjuster under the Revenue Act, 1919, is a Tax Assessor; he is a county official. The name has nothing to do with his official status. If the officer called "Tax Assessor" in the said Revenue Act is entitled to commissions out of the money collected for the county as pay for his services in assessing the taxes, we can see no reason why the officer called "Tax Adjuster" by said Act is not entitled to pay for his services in assessing such taxes out of county funds as provided by the Act. The right of the Legislature to place the burden of the expense of assessing and collecting a tax upon the tax funds, when collected, seems to be implied from the very nature of such a case; and we apprehend that it is immaterial whether the pay is to be taken as commissions or as a reasonable lump sum or as a monthly salary. This right of the Legislature to provide for payment of expense of assessing and collecting a tax out of the taxes collected is clearly shown in the case of Birmingham v. Hawkins, 94 So. 62, *et seq.* The amendment to the constitution allowing a school district to levy a three-mill tax, contains the provision following:

"Section 3. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct, and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district as the law may direct."

"It will be seen from a reading of said case of City of Birmingham v. Hawkins, that while the amendment to the constitution provides that "the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the said district, as the law may direct," still this provision does not exempt this fund from payment of the expense of assessing and collecting such taxes.

We are, for the foregoing reasons, and the opinions cited, of the opinion that it is a ministerial duty of the Court of County Commissioners to issue warrants for the monthly salary due Mr. Sheehan for his services as Tax Adjuster of Houston County for the months it has failed to do so, and that it thereupon becomes the duty of the County Treasurer to pay such warrants as part of the actual governmental expenses of said county.

Yours truly,
A. A. EVANS,
Assistant Attorney General.

September 25, 1923.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Sir:

Your letter of September 18th, 1923, addressed to Hon. Hatwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish an opinion with reference to House Bill No. 845 recently passed by the Legislature in two of its aspects. You ask,

"First. Does this law apply to deeds executed before the passage of this Act and not filed until after the Act goes into effect, namely, 1st of October, 1923?"

"Second. If a lease sale contract which stipulates a purchase price of $1,500.00 with a cash payment of $500.00, leaving a balance of $1,000.00 on which there would be collected a mortgage tax, would I be required to collect a tax on the $500.00 cash payment?"

In answer to your first question will say that, in my opinion, it is immaterial when the deed was executed, if offered for record on Oct 1st, 1923, or at any time thereafter, the tax for filing the deed for record must be paid. The Act provides in the first sentence of Section 1 that "No deed, bill of sale or other instrument of like character which conveys any real or personal property within the State, or which conveys any interest in any such property, shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record," etc. It is very clear that it is the offering for record which is the occasion of paying the tax, and not the time of execution. Nothing is said in the Act about the date of execution of such a deed and, in our opinion, the date of execution is immaterial; the tax must be paid on all deeds and bills of sale offered for record on October 1, 1923, or any time thereafter.

In answer to your second question, will say that, in my opinion, where a lease sale contract is offered for record, where the purchase price was $1,500.00, with a cash payment of five hundred dollars and deferred payments amounting to $1,000.00, a mortgage filing tax must be paid measured by the $1,000.00 deferred payment and a deed filing tax must also be paid measured by the $500.00 cash payment.

I arrive at the foregoing conclusion from the following language of said House Bill No. 845:

> "Provided, however, that this Act shall not be so construed or enforced as to require the payment of privilege tax herein provided on mortgages, deeds of trust or other instruments in the nature of a mortgage or deed or other instruments with vendors lien *except as to that part of the*

purchase price which is paid in cash or other articles of value and which pay no other privilege tax for recording.

The latter part of the foregoing quotation is very awkwardly expressed; but I interpret it to mean, where it says "and which pay no other privilege tax for recording," that no other privilege tax is measured by the amount of the cash payment; not that no other privilege tax is paid measured by the deferred payment or payments. Another privilege tax is paid under the privilege tax for recording mortgages, deeds of trust, conditional sales, etc., measured by the deferred payment, but no other than the deed filing tax is paid measured by the cash payment.

Yours very respectfully,

A. A. EVANS,

Special Assistant Attorney General.

September 28, 1923.

Hon. G. Ernest Jones,

Montgomery, Ala.

Dear Sir:

Replying to your inquiry as to whether the General Road Law of 1915 known as the Goode Act, Acts 1915, 573, repeals the local road law for Barbour County passed at the same session of the Legislature, Local Acts 1915, page 385, I quote from the case of Hudgens v. State, 72 So. 605, 607, which deals with the local road law for Crenshaw County passed at the 1915 session of the Legislature and decides the legal question inquired about by you, as follows:

> "Nor was the Act under which the warrants were issued, (Local Acts 1915, page 85, et seq. approved Aug. 24, 1915, displaced and repealed by General Acts 1915, page 573, approved September 22, 1915, as contended by appellant, for the latter Act (Section 3) provides: 'That this Act shall not be construed to repeal either in part or in whole any existing local or special law.'"

See also to the same effect State v. Kirkpatrick, 95 So. 490.

It is apparent from the two cases above cited that the Barbour County Road Law was not repealed by the General Road Law of 1915.

Yours very truly,
HARWELL G. DAVIS
Attorney General.

October 1, 1923.

Hon. J. E. Jordan, Mayor,
Sylacauga, Ala.

Dear Sir:

In reply to your letter of September 4, 1923, will say as follows:

You say that the corporate limits of Sylacauga were by Legislative Act, approved in August last, enlarged. You wish to know, first, are the property owners, in the new territory added, subject to city tax due and payable October 1st, this year, and second, are the property owners of this new territory subject to the three-mill school tax, this school tax having been voted by the citizens of Sylacauga in December, 1922.

In answer to your first question, will say that the property in this added territory will be subject to levy of taxes by the city in October, which taxes will become due and payable on December 1st, and delinquent on January 1st. Code of 1907, Sections 1311 and 1312; Peoples Bank of Red Level v. Town of Red Level, 202 Ala. 496. Of course, the levy is made upon the valuation fixed for State and county taxation for the preceding tax year, that is, upon the valuation made for tax assessment year beginning October 1st, 1922, and ending September 30th, 1923. The levy by the city after the first day of October will be based on that valuation, although this property was not in the city when the State and county assessment valuation was fixed. It will be in the city when the city levy is made after October 1st, and when the valuation of the property for State and county taxation for the preceding year, State and county, will have been completed.

In answer to your second question, will say that, in my opinion, the three-mill tax for district school purposes cannot be collected from a levy on the property located in the new territory added until the matter is submitted to a vote of the qualified electors of the entire city with its present boundaries. It is, in my opinion, that the question vel non as to whether this three-mill district school tax shall be levied upon any district it must be submitted to a vote of the qualified electors of such district. When the boundaries are changed, it becomes a new district within the meaning of the constitution if the new territory taken in is to be considered as part of the district.

Yours respectfully,

A. A. EVANS,

Assistant Attorney General.

October 2, 1923.

Hon. C. J. Allen,

Superintendent of Education,

Fort Payne, Ala.

Dear Sir:

Replying to your letter of September 19th to the Attorney General, it is my opinion that the City Board of Education has no legal right to appropriate from its general educational funds or special district funds for paying salaries of teachers in the County High School.

The law providing for the levy of the special tax also provides that the same shall be paid over to the treasurer of said city of over two thousand population, which shall be used for the exclusive benefit of the *public schools* of such district, in accordance with the law.

The law providing for the election and levy specifies that it shall be used for public school purposes.

In my opinion this does not include purposes for high schools. What is said above is with reference to the special tax.

The authority to make an appropriation from general school funds for County High School purposes is to be found in the Acts of 1919, page 642, and which is Section 100, Article 24 of the Education Act, reading as follows:

"The cities and towns of this State are authorized and empowered to make appropriations from city and town funds, and issue bonds to aid in the erection and in the equipment of high school buildings."

You will observe that this does not authorize an appropriation to be made for the purpose of paying teachers' salaries in the high schools.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

October 3, 1923.

Hon. Harwell G. Davis,
Attorney General,
Capitol.

Dear Sir:

Complying with your request, I submit my opinion on the following question:

Is a motor vehicle used for colportage subject to assessment and taxation?

Section 2 of the Revenue Bill approved August 22nd, 1923, is merely a re-enaction of the former provisions affecting this subject matter.

It exempts from taxation "all property, real and personal" used exclusively for religious worship.

The new motor vehicle law approved September 13, 1923, does not expressly exempt any motor vehicles from assessment and taxation under its provisions except those owned and used by municipalities, counties and the State, but we are of the opinion that this Act was not intended to make taxable any motor vehicle not made taxable under the general revenue law but was intended merely to regulate the payment of taxes on taxable motor vehicles.

Hence the question is resolved down to whether or not an automobile used for colportage is "used exclusively for religious worship."

Colportage is the distribution of religious books, tracts, etc., by colporteurs. Colporteurs are persons who sell and distribute religious tracts, books, etc. The distribution is done under the auspices of a religious organization and although some of the books are sold, it is not the purpose of the organization to make a profit but to place religious books, tracts, etc., in homes not reached by the churches.

We think, therefore, that colportage is in no sense a business venture, but comes within the exemption clause above set out.

In the case of State, et al. v. Church of the Advent, 95 So. 3, the court makes no distinction between the terms "worship" and "purpose" as used in our exemption clause. And inasmuch as the question there considered was whether or not a church parsonage should be exempt from taxation, we infer that the two terms have the same meaning within the exemption clause.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 4, 1923.

Hon. Glenn Andrews,
Capitol.

Dear Sir:

You ask "if a prisoner is arrested and carried to the County Jail and makes bond and is released without having been fed can a charge legally be made against the State for feeding him?

The law provides "when the number of prisoners does not exceed ten, for each prisoner, sixty cents per day, or such part thereof as may be necessary, is allowed," etc. Acts 1920, page 28.

The law does not attempt to provide a scale by meals or fractions of a day. It provides that the Sheriff shall receive a certain amount per day for each prisoner confined. It provides that the Sheriff shall furnish an itemized statement giving *date* committed and *date* discharged. It does not provide that the *time of day* committed and discharged shall be shown, nor whether he shall be entitled to compensation for prisoners discharged before breakfast, or before dinner or before supper.

We are, therefore, of the opinion that under the law the Sheriff is entitled to compensation, according to the scale provided, for every prisoner confined in jail during the day, and that the length of his confinement during the day is immaterial.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 5, 1923.

Hon. Sam T. Huey, Clerk,
Probate Court,
Bessemer, Ala.

Dear Sir:

The State Tax Commission yesterday referred to this office for answer your letter of the 19th ult., which propounds certain inquiries relative to the Act approved September 16, 1923, and which imposes a license or privilege tax on all deeds, bills of sale and other instruments of like character admitted to record in the Probate Office of this State. The inquiries will be considered in the order contained in your letter.

First: Whether or not a deed, bill of sale or other instrument of like character is subject to the tax imposed by this Act is determined by the date it is received for record, and not by the date of its execution. If such instrument was received for record on or after the 1st day of October, 1923, it would be subject to the tax imposed by this Act, regardless of the date of its execution.

Second: Neither the recited considerations of the conveyance, nor the purpose for which it is executed determine the liability of the instrument to this tax. The tax is imposed on "deeds, bills of sale or other instruments of like character which convey any real or personal property within this State or which convey any interest in any such property," and the purpose for which the instrument was executed in no way determines the liability for this tax thereon. The amount of the tax is measured by the value of the real or personal property situated in this State which is conveyed by the instrument, regardless of the recited consideration or the purpose or character of the conveyance.

Third. The amount of tax due on such instrument, where a vendor's lien is retained for the payment of the purchase price or a part of the purchase price, is determined by the balance obtained after deducting from the value of the property in this State conveyed the amount of the lien which is subject to the mortgage tax.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

October 8, 1923.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of October 8th to the Attorney General propounding the following question has been received and has been referred to me for an opinion, and I beg to advise you as follows:

> "Will you kindly advise me whether or not under the Act of 1915 giving the Courts of County Commissioners legislative, executive and judicial powers with regard to the construction and maintenance of the public roads, Acts 1915, page 573, the Court of County Commissioners can delegate to the road apportioners or other road tax collectors the right to hold and disburse the proceeds of a per capita road tax imposed in lieu of work on the public roads?"

Acts of 1915, page 345, abolished the office of County Treasurer and placed the duties regarding the custody of county funds upon depositories, and sets forth by Section 3 "That all moneys heretofore required by law to be paid to the County Treasurer shall be put into such National or State Bank of said county as the Board of Revenue or Court of County Commissioners of said county may elect to the credit of said county;" while Section 4 provides "That accounts shall be opened and kept in said bank

in such manner and funds as such board may direct disbursements to be made on the order of the Board of Revenue or Court of County Commissioners."

It is made the duty of the County Treasurer by Section 211 of the Code of 1907 "To receive and keep the money of the county and disburse the same according to law." Also by Section 3 of said Section 211 the treasurer was required to keep a separate register of the special funds, if any.

It is said in the case of Barnes v. Hudman, 57 Ala. 504: "Thus it will be seen that in the absence of any other provision actually made according to law, it is only through the County Treasurer that the Court of County Commissioners—the administrative body without whose sanction no county debt may be discharged—can pay claims against the county, and it is clear that ordinarily all the moneys of the county must go into the County Treasury and put in the custody and charge of the County Treasurer."

To the same effect is the decision of the Supreme Court in the case of Searcy et al. v. Cullman County, 190 Ala. 287, in which funds were derived from the sale of county bonds for the purpose of affording funds with which to construct and maintain public roads.

The Act of 1915, page 678, does not authorize the keeping of the road funds otherwise than by the County Treasurer or depository. That particular part of said Act relating to the custody and the management of the road funds authorizes the Court of County Commissioners or like governing body of any county to transfer to the road fund of the county any surplus of general funds in the County Treasury.

It is my opinion, that it was the intention of the Legislature to preserve a bonded custodian for all funds belonging to the county, including road funds to be collected under the operation of said Road Act, and it nowhere appears from said Act that it was the intention of the Legislature to allow said funds to be deposited elsewhere than in the County Treasury or depository.

You will observe that Acts of 1919, page 198, amending Section 12 of said Goode Act in part is as follows: "That the Court of County Commissioners or Board of Revenue or courts of like jurisdiction, may accept a money compensation to be fixed by

them not to exceed ten dollars per capita per annum from those liable for road duty in lieu of the labor required by law upon public roads; and provide for the time of the payment of the same. Said money to go into the road fund of said county and to be appropriated exclusively for the maintenance or improvement of the public roads of such county."

As I view it, this per capita tax should be placed into the road fund of said county, and in the depository of said county, and to be disbursed after claims against said fund have been audited and allowed as claims against the county are audited and allowed, under and by virtue of Sections 146 and 147 of the Code.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

October 9, 1923.

Hon. L. F. Sessions,
Probate Judge,
Ozark, Ala.

Dear Sir:

The Attorney General has referred to me your request for an opinion on the two following questions:

(1) Is the Act "To provide for the collection of a per capita tax and for a license tax on all vehicles" in Dale County, approved September 26, 1923, violative of Section 70 of the constitution of Alabama, which provides that "No revenue bill shall be passed during the last five days of the session?"

(2) By what method, if any, may claims for pay rolls for road hands and feed bills for teams, which are incurred in working the roads, be provided for between the regular meetings of the Court of County Commissioners?

In reply to your first inquiry, will state that I am of the opinion that the Act referred to does not violate Section 70 of the constitution for the reason that in my judgment the bill was not a revenue bill within the meaning of the constitution. I cite in support of this view the following cases:

Kennemer v. State, 150 Ala. 74, 43 South. 482.
Ex parte City of Birmingham, 201 Ala. 641.

I quote from the first case cited as follows:

"The appellant insists that subdivision 5 of Section 21 of the Act is void, because it is a 'bill for raising revenue' and was passed within the last five days of the session. Const. Art. 4, Sec. 70. In Perry County v. Railroad, 58 Ala. 557, the constitutional term under consideration was defined to be 'to levy a tax, as a means of collecting revenue.' This term is incorporated in our present fundamental law, and with it the judicial construction quoted. The maintenance, improvement, and protection of public roads has become an important feature of county government. As the means of communication and transportation, it has no practical substitute; and efforts to promote the perfection of public roads, through governmental supervision and agency, should be encouraged and advanced in all legitimate ways. The Act under consideration seems to afford a general system for the maintenance, improvement, and protection of the public roads of the County of Jackson, and in furtherance of the worthy purpose includes in its provisions subdivision 5, quoted above. Section 21 also embraces provisions granting power to the Commissioners' Court to prescribe the maximum draft to be hauled at one time over the roads, and also to inhibit the use of the roads by heavy machinery, and also to require a license to haul logs or lumber to sawmills and to fix the price to be paid therefor. Then follows subdivision 5. It is perfectly apparent that the purpose of these provisions was, not to simply raise revenue through the indirect method of license fees, nor to lay or levy a tax on the vehicles used for the transportation of the heavy material specified, but, on the contrary, to compel those deriving special benefit from the roads by way of their facility for hauling ponderous burdens to mill or market or elsewhere, and to require of those so using the roads to convey these heavier burdens, and thereby to a greater comparative degree wearing the road, to pay a reasonable sum for the privilege,

which, in this instance, is devoted by the Act to the liquidation of the road debt. That this may be legitimately and constitutionally done cannot, we think, be gainsaid. Browne v. City of Mobile, 122 Ala. 159, 25 So. 223; Kentz v. City of Mobile, 120 Ala. 623, 24 So. 952, and cases in these decisions cited; Shepherd v. Dowling, 127 Ala. 1, 28 So. 791, 85 Am. St. Rep. 68."

In the case of ex parte City of Birmingham, above cited, the Supreme Court, in an opinion by Judge Mayfield, held that a city ordinance providing for a so-called street tax of $5.00 did not impose a tax burden, but merely provided for a commutation of the public and personal duty to work or maintain streets. He states that if the payment of the $5.00 could be justified only as a mere tax it would be unconstitutional.

Under the holding made in the two cases cited neither the per capita tax nor the vehicle tax characterizes the Act as a revenue measure, and since it is not a revenue measure, it is not made invalid by the inhibitions in Section 70 of the constitution against the passage of revenue bills during the last five days of the session of the Legislature.

With reference to the second inquiry, it appears that the present road law for your county is made up of the following:

A Local Act of 1903, Local Acts 1903, page 264; General Road Law of 1915, Acts 1915, page 573; which did not repeal the local law of 1903; Hudgens v. State, 72 So. 605, State v. Kirkpatrick, 95 So. 490; the 1923 Act approved September 26, 1923.

These Acts provide for raising funds for road purposes and put the construction and maintenance of the public roads of the county under the direction and control of the Court of County Commissioners. The 1903 statute provides that the Court of County Commissioners "Shall hire all such hands to work on the public roads as may be necessary," and also authorizes the purchase of tools, teams, etc., but none of these Acts contain any provision for paying bills for labor or feed for teams in a manner different from that provided by law for the payment of general claims against the county.

The Court of County Commissioners may hold regular meetings four times each year. Code, Section 3310. It may also adjourn from time to time and meet when and as often as desired. Board of Revenue of Covington County v. Merrill, 193 Ala. 521, 536. Special meetings may also be held at any time it may be so desired. Code of 1907, Section 3311. I quote from the case just cited as follows:

> "The statute fixes, as we have seen, the day of the meeting in regular session 'on the second Monday in February, April, August and November, respectively, of each year, and such special sessions as are now or may hereafter be required by law to be held by Courts of County Commissioners or other courts of like jurisdiction.' This statute does not, by fixing the day on which the regular session shall begin, limit the action of the Board of Revenue in general session to this designated Monday. It does not require that all the county's business shall be concluded by the court in that one day. They are required to meet in regular session on that day, and are permitted and expected to continue the session from day to day, or as they may in session determine and declare, till the public business is concluded. The special session provided for in the Act is not the prolongation of a regular session in the dispatch of the public business; it may be called when a proper adjournment has not been taken in regular session to a subsequent date. The regular session must begin on this day, and must be concluded, or prolonged, or adjourned to any other time the judgment or convenience of the board may dictate, not to extend beyond the next regular session. Any other construction of the statute would narrow this necessary general authority reposed in the court or board, and interfere with the proper conduct of the county's business by the officials to whose judgment such matters are confided by the electorate of the county."

I know of no method by which the claims for compensation for work on the roads or for feed for teams can be legally handled without being passed on by the Court of County Commissioners while in session. I have understood that in certain

counties the Board of Revenue has an auditing committee of three to pass on such claims for payment and that when the board meets it ratifies the action of the auditing committee in approving the bills. I am of the opinion that such a course is not in accordance with the law which requires all claims payable out of the general funds of the county, when no special method is provided for payment, to be presented to and approved by the Court of County Commissioners, not a committee constituting a part of the membership of the court. Code 1907, Section 146, *et seq.* This rule is stated in the case of Dale County v. Gunter, 46 Ala. 118, 135, in the following language:

> "If a claim is given against a county by statute, and no mode is prescribed for its payment, then it must be presented for allowance like other claims, and paid out of the County Treasury in the usual way, by a warrant of the Judge of Probate. If such claim, when presented, is rejected, or not allowed in full, then it may be collected by suit against the county, as other claims are collected that have been presented and rejected, or allowed only in part. But on the contrary, if the statute by which the claim is given prescribed the way in which the claim is to be collected, and how the means are to be obtained by which it is to be paid, then the claim must be enforced and paid in the mode and manner provided, and in no other way."

In the case of Miller, Treas. v. State, ex rel, Paris, Coroner, 145 Ala. 494, 497, the court uses this language:

> "It has been and still is the general financial policy of the State, that all claims against the county shall be presented to the Commissioners' Court, or to the Boards of Revenue exercising the powers and duties of the Commissioners' Court."

I also quote from the case of State ex rel. City of Mobile v. Board of Revenue and Road Commissioners of Mobile County, 180 Ala. 514, 519, as follows:

"As declared in Miller v. Paris, 145 Ala. 494, 497, 39 So. 658, 659: 'It has been, and still is, the general financial policy of the State that all claims against a county shall be presented to the Commissioners' Court, or to the Board of Revenue exercising the powers and duties of the Commissioners' Court.' Where special laws in express terms or by necessary implication provide for a different mode of dealing with such claims, that mode is, of course, to be followed, though in derogation of the general statutes and policy of the State. Dale County v. Gunter, 46 Ala. 134; Commissioners v. Rather, 48 Ala. 433. And, again, where the law itself determines the fact and the amount of the claim, leaving nothing to be ascertained or determined by the County Board, it is generally held that presentment for audit, and allowance or rejection is not contemplated nor required. Caldwell v. Dunklin, 65 Ala. 461; Shinbone v. Randolph County, 56 Ala. 183. In cases other than those which fall within the two exceptional classes above referred to, we can find no authority in our statutes or decisions for suspending the operation of our general statutes on this subject."

Also in the case of First National Bank of Abbeville v. Terry Briggs & Co., 83 So. 170, in which the Supreme Court, speaking through Justice McClellan, in dealing with a claim covered by a contract for work on the roads says:

"It appears from the agreed statement of facts that the services thus contemplated were performed according to the contracts, and that the claims for the respective sums stated in the warrants in question were audited and allowed by the Court of County Commissioners, thus disclosing conformity to the command of Code Section 146, which requires the audit and allowance of claims of the character here involved."

As there are only two exceptions to the rule requiring all claims against a county to be passed upon by the Court of County Commissioners, State, ex rel. City of Mobile, etc., supra, and the claims here under discussion are not included in either of those classes, such claims must be passed upon and approved by

the Court of County Commissioners before payment can be legally made.

Since the plan of collecting a road tax and employing laborers to work the roads is a departure from the former plan of requiring persons to do road duty, it would seem that the Legislature should have provided some special plan for compensating such laborers during the interim between regular meetings of the Court of County Commissioners. This has not been done, however, and it results that the Court of County Commissioners must approve such claims before payment can be legally made.

If I can serve you further in this connection, please advise.

Yours very truly,

LAMAR FIELD,

Assistant Attorney General.

October 10, 1923.

Hon. I. T. Quinn,
Commissioner,
Capitol:

Dear Sir:

In response to your request for an opinion as to whether a person seining in waters of this State for fish prohibited from being caught with a seine, and who procures his prosecution and conviction before the Justice of the Peace, who imposes a fine of ten dollars for a violation of said offense, is immune from prosecution for a violation of Section 6901 of the Code of 1907, and which request has been handed to me by the Attorney General for a reply, I beg to advise you, that it is my opinion as follows:

Section 6901 makes it a misdemeanor for a person to take, catch or kill any fish in any of the waters of this State by means of a seine; limited by Section 6902 of the Code of 1907 to the waters of the State other than to ponds and reservoirs wholly on the premises of the person using said seine; other than salt waters and waters in which the tide ebbs and flows; and on conviction specifies a fine of from fifty to two hundred dollars.

Section 1 of the Act approved February 15, 1919, is limited to the creeks, rivers or other streams, estuaries, lagoons or lakes emptying into any of the salt waters or bays of this State within ten miles from the point where such bodies of water empty or connect with the salt waters or bays of this State.

Section 3 of the last mentioned Act makes it unlawful for a person to catch bass, green trout, bream, or goggle-eye by means other than that of the hook and line, trowl, fly, spinner, or substitute therefor, in any of the waters of this State.

For a conviction for violation of the provisions of said Act of 1919, the fine is from ten to fifty dollars. A person catching bass, goggle-eye, green trout or bass by means of a seine could lawfully be fined from ten to fifty dollars. As Section 5 of said Act repeals all laws and parts of laws in conflict with the provisions thereof, therefore, the amount of fine to be imposed is determined by the evidence as to the kind of fish caught by the use of said seine, and in order to impose a fine of more than fifty dollars, it is necessary for the State to prove by the evidence beyond reasonable doubt that the defendant seined within the prohibited waters and caught fish other than bass, green trout, bream or goggle-eye. Again if the evidence shows that the defendant by means of said seine caught bass, green trout, bream or goggle-eye and also caught other fish, it is permissible for the court to impose a fine of from ten to fifty dollars, or to impose a fine of from fifty to two hundred dollars, as each of said offenses is embraced within one act, and a crime cannot be split or divided so as to allow two or more convictions for one offense. Moore v. State, 71 Ala. 310.

The Act approved February 22, 1915, confers jurisdiction of the above offense upon Justices of the Peace. Where the State has thought proper to prosecute the offense in its mildest form, it is better that the residue of the offense shall go unpunished, than by sustaining a second indictment to sanction a practice which might be rendered an instrument of oppression to the citizen.

The above principle is subject to the modification that each of the former convictions were procured by the fraud, connivance or collusion of the defendant. This fact vitiates it, and it is no bar to a subsequent prosecution, which facts must be set

up by replication to the plea if the State intends to avail the force of the principle of former conviction.

Moore v. State, supra.
Tenay v. State, 70 Sou. 506.

Hoping what is said above sufficiently answers your inquiry, I am

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

October 11th, 1923.

Mr. I. F. McDonnell, Chief Engineer,
Alabama Public Service Commission,
Montgomery, Ala.

Dear Sir:

In Re: Special service to the Haraden Dramatic Company, Carbon Hill, Ala.

Your inquiry of the 8th inst., has been received.

The question raised by you, as I understand your inquiry is:

If any public utility in this State charges an unlawful rate, what jurisdiction has this commission over the matter, if any; what would be the proper procedure for the complainant and to what extent could the commission grant relief?

It appears that the Alabama Public Utility Act of 1920, Section 25, provided that every utility in the State should file with the commission within sixty days from the going into effect of this Act, schedule showing all rates and service regulations in force for any services performed by it within the State; and copies of all contracts providing rates or service regulations which had not been approved by the commission or which were not in general operation. It is my opinion that it was the intention of the Legislature that if said Section 25 was complied with the rates and service regulations and contracts filed thereunder

should thereafter be deemed to be lawful unless the same were modified or set aside by some affirmative action by the commission.

Section 26 of this Act makes provision for a change of rates or service regulations by the utility thereafter and, of course, rates and service regulations which became effective under the provisions of said Sections 26 and 27, would be lawful rates.

Any rates or service regulations fixed by order of the commission upon a complaint or upon a citation heard as required by Sections 28 and 31 of this Act would also, of course, be lawful rates.

Under Section 18 of this Act any agreement or contract by a utility with another, otherwise than pursuant to established rates, must be approved by the commission before it becomes effective. Said Section 18 specifically provides that "Unless and until so approved (by the commission) such contract shall be of no effect."

Under Section 33 unlawful rates are defined. Under the provisions of this section it is made unlawful for any utility to charge, demand, collect or receive a greater or less rate for any service performed by it within the State or for any service in connection therewith than is specified in such schedule of rates and service regulations as may at the time be in force, or to demand, collect, or receive any rate not specified in such schedule of rates and service regulation.

It appears, therefore, from this Act that unless a rate or service regulation has become a lawful rate under said Sections 25, 26, 27, 28 to 31 or, in a case of special contract rates, under Section 18, the rate would be an unlawful rate within the meaning of said Section 33.

Under Section 32 of this Act it is provided as follows:

> "Whenever, after investigation in accordance with the provisions of this Act, the commission shall be of the opinion that any provision or requirement of this Act, or any order of the commission is being, has been or is about to be violated, it may make and enter of record an order in the premises, specifying the actual or proposed acts or

omission to act which constitute such real or proposed violation and requiring that such violation be discontinued or rectified, or both or that it be prevented. No order, however, shall be made by the commission affecting any rate or service except as otherwise specifically provided, unless or until a public hearing has been held in accordance with the provisions of this Act."

In my opinion no rate of a public utility can be a lawful rate unless it becomes such by virtue of some provision or requirement of this Act or an order of the commission made under authority of the Act. Therefore, if any public utility charges a rate that is not lawful it would be violating the provisions of the Act or an order of the commission and said Section 32 provides that the commission may investigate any such alleged violation and may make and enter of record an order specifying the Act which constitutes such violation and require "that such violation be discontinued or *rectified or both* or that it be prevented." No such order can be made by the commission unless a public hearing has been held in accordance with the provisions of the Act.

It is my opinion, therefore, that any person complaining of an unlawful rate or charge by a public utility can file a complaint before the commission setting out the basis of the complaint and is entitled to be heard by the commission and the commission has jurisdiction to hear the complaint and if the commission finds that provisions of such Act or of any order of the commission has been violated to require by its order that the violations be discontinued or rectified or both, or that it be prevented.

The word "rectified" must mean that the commission is given authority to order the utility to reimburse the complainant for any overcharge.

If the commission upon any such investigation should find that a public utility had been guilty of charging, demanding, collecting or receiving a greater or less rate than the lawful rate, in the case of an overcharge, after the commission had issued its order and notice thereof had been given to the utility, the utility would be liable for the penalty set out under Section 69 if it

should fail to make ample and full recompense for the wrong or injustice done, within sixty days from the time of such notice. I do not think it would be the duty of the commission to bring a suit to recover any overcharge in behalf of any such complaint. I do not think the commission has any such authority. There are other ways, however, by which the commission can bring about compliance with its orders. See Sections 54 and 64 of the Act.

Yours very truly,
HUGH WHITE,
Special Assistant Attorney General.

October 12, 1923.

Hon. W. R. Jackson,
Judge of Probate,
Moulton, Ala.

Dear Sir:

Replying to the inquiry contained in your letter of the 6th instant, I beg to advise that Section 83 of the Act approved August 22, 1923, entitled:

> "An Act in reference to and to further provide for the general revenue of the State of Alabama,"

provides that all the funds derived by the several counties from what is known as the "gasoline tax" be expended exclusively for maintenance and repair of roads, highways and bridges in said counties.

> "The use or expenditure of any of said funds in any other manner or for any other purposes than as provided"

constitutes a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the County Jail or at hard labor for the county for not less than one nor more than twelve months. Any expense absolutely necessary to the maintenance and repair of roads, highways and bridges in the county would be a proper expenditure of this fund.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

October 16, 1923.

Messrs. Proctor and Snodgrass,
Scottsboro, Ala.

Dear Sirs:

Your letter requesting an opinion from this office states the following facts:

"The Probate Judge, sitting as a Juvenile Court, convicted a negro boy under sixteen but over fifteen years of age and sentenced him to the Alabama Reform School for Negro Lawbreakers at Mt. Meigs, Ala. But the attorney for the defendant takes the position that he cannot be sentenced to said school because of Section 3 of Article 39, Acts 1919, page 670."

The Juvenile Court Law (Acts 1915, page 577, Section 1) provides that "Any child *under sixteen* years of age who violates any law of the State or any ordinance, * * * shall be deemed a ward of the State and entitled to its care and protection; and the State shall exercise its right of guardianship and control over such child in the manner hereinafter provided." Section 7 of the same Act (page 582) provides that "If the child have neither parents who are liable to provide for it, nor estate sufficient for its maintenance, then the child may be committed to any home or school or reformatory in this State that will receive and maintain the child."

The Alabama Reform School at Mt. Meigs is the only State institution authorized to carry out the provisions of this Act as to negro boys.

The Act providing for the government and control of the Reform School at Mt. Meigs provides as follows:

> "Section 3. The school is established for the proper education and training of juvenile negro lawbreakers, as may be lawfully committed to it. * * * Provided, that no criminal over the age of fifteen (15) years shall be admitted to said institution."

In order to give effect to the spirit of the law as expressed in the Juvenile Court Law, the age limit last above quoted has been construed to mean under sixteen years of age; that is, that "over the age of fifteen" means past the fifteenth year, which

would be sixteen years or older. It has been the practice of the directors of the institution for years to operate under this construction, and we are of the opinion that it is a fair one in view of the provision of the Juvenile Court Law above quoted.

Under the above limitation, criminals under sixteen will be admitted to the Alabama Reform School for Juvenile Negro Lawbreakers at Mt. Meigs.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 19, 1923.

Alabama Public Service Commission,
Montgomery, Ala.

Dear Sirs:

You have requested an official opinion of the Attorney General upon the following question:

The Alabama Power Company, a public utility operating in this State, owns and operates large plants, properties and facilities for the generation, transmission, distribution and sale to or for the public of electricity for light, heat or power, or other uses, as well as other large public utility plants which furnish utility services of a different character to and for the public. The chief source of the current and energy of the company is hydro-electric. It has been found necessary, however, for the company to construct and maintain certain auxiliary reserve steam power plants in connection with its hydro-electric installations. One of its reserve steam power plants is known as the Warrior Reserve Steam Plant,, construction of which was begun in 1916, and it was completed with the first unit in August, 1917. This unit consisted of a 30,000-horsepower turbo-generator with condenser and six 1,200-horsepower boilers and other necessary equipment, including stokers and other auxiliaries such as coal cranes, coal conveyors, boiler feed pumps, circulating water pumps, transformers, switches, ash-handling equipment, coal storage yards, coal handling tracks, coal mine development. In designing the plant, preparation was made for an ultimate installation of three

units, and all intake and discharge canals and underwater foundations for the extension to take care of two more units were put in with the original installation. Later an additional unit was installed at this plant which provided for a 30,000-kilowatt turbo-generator and condenser, with all other necessary equipment, and in order to insure continuous use of this unit, two complete boiler rooms were installed, each having a capacity of six 1,200-horsepower boilers and all other necessary equipment. The extension to the boiler room and coal handling facilities completed this part of the ultimate development of such reserve steam plant as originally planned, while the extension to the turbine room provided housing for the second unit only. The erection of two outside walls and a roof over the space left for the third unit will complete the building as originally set up. The company states that there is an existing necessity for additional reserve steam plant power, and this opinion appears to be in accord with views of the commission heretofore expressed to the company, and the company expresses its desire to meet this necessity by completion of this Warrior Reserve Steam Plant by completion of the installation of the third unit of 30,000-horsepower so that such steam plant shall be provided with an installation of three such units in accordance with the original design. As shown above, much that is required for the installation and operation of such third unit has already been done. All installation of such steam plant as above described had been made prior to the enactment of the Alabama Public Utility Act of 1920, to which reference will be made hereafter.

The question upon which you request the Attorney General's opinion is:

> Is it necessary for the company to obtain from the commission a certificate of convenience and necessity to authorize it to complete this reserve steam plant by installation therein of such additional equipment as is necessary to complete the third unit?

Prior to the enactment of the Alabama Public Utility Act of 1920, approved October 1, 1920 (Gen. and Local Acts Ala. Sp. Session 1920, page 38) there was no requirement of law in

this state which made it necessary for a public utility to obtain a certificate of convenience and necessity before constructing a plant, property or facility for the production, transmission or delivery or furnishing of gas, electricity, water or steam, or for the construction of a street or interurban railway. The Act of the Legislature approved September 25, 1915 (Gen. Acts of Ala. 1915, pages 865-867), contains no specific requirement that the public utilities must obtain any such certificate of convenience and necessity before constructing such plants or facilities and the commission, under authority of the 1915 Act, probably did not have any jurisdiction or authority in respect to this matter.

The Act of 1915 was the first law of this State providing for State regulation of street railway companies, electric companies, gas companies, water companies, hydro-electric companies or water power companies, heating companies which include all utility operations of the Alabama Power Company. Section 49 of the said Alabama Public Utility Act of 1920 provides as follows:

> "Section 49. Certificate of Convenience and Necessity. No plant, property or facility for the production, transmission, delivery or furnishing of gas, electricity, water or steam, and no street or interurban railway shall be constructed except ordinary extensions of existing systems in the usual course of business until written application is first made to the commission for the issuance of a certificate of convenience and necessity, and the issuance by the commission of such certificate. Upon the filing of any such applications, and after a public hearing of all parties interested, the commission may, or may not, in its discretion, issue such a certificate of convenience and necessity and if issued, may prescribe such conditions upon the issuance as it may deem advisable."

Said Section 49 has never been construed by our courts. The question here presented makes it necessary for the Attorney General to construe said Section 49, insofar as it is applicable to this question. We must, therefore, look to the language of said Section 49 as well as to the entire Act of which it is a part, and to such purposes of said Section 49 as are manifest from its

language and from the language of the entire Act, and to such aids as we can find in the construction of similar statutes and provisions by the courts and by other commissions. Said Utility Act of 1920 does not show the purpose of requiring such a certificate of convenience and necessity further than is indicated in the general purposes of the Act or in the language of said Section 49.

Under the provisions of said Section 49 the utility is not required to obtain a certificate of convenience and necessity to construct any "ordinary extension of an existing system in the usual course of business."

If the plant construction here involved constitutes "ordinary extension of an existing system in the usual course of business," then whether the same should be made is a matter to be determined by the judgment of the management of the utility, and there is no necessity for the utility to make application for such certificate of convenience and necessity. We think the determination of the question here involved depends upon a reasonable construction of what is meant by the Act by such phrase "ordinary extension of an existing system in the usual course of business." Although there is room for difference of opinion as to whether the "construction of any plant, property or facility" was intended to apply only to the construction of some new plant, property or facility and not to the "completion" of an existing plant, property or facility.

On this latter question we express no opinion because, in our judgment, it is not necessarily involved in the determination of the present inquiry:

Section 55 of the Illinois Public Utilities Act provides as follows:

> "No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addition thereto, unless and until it shall have obtained from the commission a certificate that public convenience and necessity require such construction."

The Supreme Court of Illinois has construed the application of this provision in at least two cases. In the first case next below cited the court held that the building of a new telephone exchange under the circumstances there set out was the building of a new equipment or facility within the meaning of said Section 55 of the Illinois statute so as to require a certificate of convenience and necessity, but it was made plain in this case, hereinafter referred to as the Noble case, that such conclusion was based upon the finding by that court that the installation of such new exchange was not simply a construction "to further the same kind of business but in order that the telephone company might install a new service." The court declared that the test was "whether the new construction is entirely new or is an extension of an existing plant is the determination as to whether or not it is a construction to further the same kind of business or to install a new service." State Public Utilities Commission v. Noble, P. U. R. 1917 A. 520; 275 Ill. 121; 113 N. E. 910.

The same court in the second case construed the application of said Section 55 of the Illinois Public Utility Act as not requiring a certificate of public convenience and necessity to authorize a telegraph company to make such additions to its equipment used in telegraphing as were necessary to enable the company to use its telegraph wires to convey messages by telephone. This case is hereafter referred to as the Postal Telegraph case. State Public Utilities Commission ex rel. Chicago Telephone Company v. Postal Telegraph-Cable Co., P. U. R. 1919 B, page 142; 285 Ill. 411; 120 N. E. 795.

In both these cases orders had been made by the Public Utilities Commission of Illinois involving questions passed on by the court.

The Illinois Commerce Commission has just recently construed the effect of these two decisions of its Supreme Court, and such construction by a commission dealing directly with these matters is worthy of consideration, being as follows:

> "Adopting, therefore, the plain reasoning of the Supreme Court in both the Noble and the Postal Telegraph cases it is apparent that the substitution, extension or addition to plant, equipment, property or facilities, for which a certificate of

public convenience and necessity is not required by the statute provides for the substitution, extension or addition to plant, equipment, property or facilities by utilities in the municipalities, communities, or territory already served by such utilities for the better, more convenient, more efficient or cheaper service of the public: but where the addition or extension of plant or equipment extends the service of utilities into municipalities, communities or territory not formerly served, then a certificate of public convenience and necessity is required. Particularly must this be true in the orderly control of the utilities as provided by law when it appears that the municipalities, communities or territory is already rendered transportation service by other utilities operating and rendering service to the public under the protection of, and regulated by the laws of Illinois."

Chicago & W. T. R. Co. v. Metropolitan, etc. R. R. Co., P. U. R. Vol. 1923 D, Advance Sheets, August 2, 1923, pages 164, 168, 169.

It is true, that there is some difference in the language of Section 49 of the Alabama Public Utility Act of 1920 and said Section 55 of the Illinois Public Utilities Act. But even after these differences in language have been considered we are persuaded that the purposes in each case and the ends to be achieved by the lawmaking bodies were substantially the same.

A large number of the States now have similar statutory requirements as applying to public utilities. While these requirements in the different States vary to some extent, the underlying purposes appear to be very much the same.

One of the chief of such purposes appears to be to withdraw the unrestricted right of competition between utilities rendering service of the same kind. The Court of Appeals of New York, speaking through Judge Gray on this subject, said:

"The certificate of public convenience and necessity is to be granted upon considerations not alone bearing upon the convenience of the public, but affecting the other transportation companies which are already serving the territory.

They have the right to be considered and to be protected, where there is no necessity for a wider public service, against the designs of persons more interested in forcing terms from them than in subserving the public convenience. Certainly the rights of shareholders in the existing roads demand fair consideration."

People ex. rel. New York C. & H. R. R. Co. v. Public Service Commission, 195 N. Y. 157, 166; 88 N. E. 261, 264.

After quoting the above language of Judge Gray in the case last cited, the New York Court of Appeals, in a later case, stated:

"Certain facts and established principles guide irresistibly to the conclusion that the respondent shall not begin the construction of an electric plant without first having obtained the permission and approval of the commission. It is the settled policy of the State, arising through an extended and instructive experience, to withdraw the unrestricted right of competition between corporations occupying, through special consents or franchises, the public streets and places, and supplying the public with their products or utilities, which are well-nigh necessities. People ex rel. New York Electric Lines Co. v. Ellison, 188 N. Y. 523, 81 N. E. 447; Re New York Electric Lines Co. 201 N. Y. 321, 94 N. E. 1056; Willcox v. Consolidated Gas Co. 212 U. S. 19, 53 L. Ed. 382, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034. This policy is instigated and embodied in the Public Service Commission's law, which was adopted in the interest and for the good of the people, and should receive from the courts an activity and effect in aid of that policy, within the fair and reasonable meaning of its provisions. The Legislature will not be deemed to have departed in that law from that policy, unless there is clear and certain language to that effect. Re New York, W. & B. R. Co., 193 N. Y. 72, 85 N. E. 1014."

People ex rel. New York Edison Co. v. Willcox, 45 L. R. A. (N. S.) 629, 635; 207 N. Y. 86; 100 N. E. 705.

In considering the purposes of statutes requiring the granting of certificates of public convenience and necessity, the Michigan Public Utilities Commission, in the case of In Re Cole P. U. R. 1921 C, 385, 390, said:

> "An examination of the statutes and of the decisions construing the statutes relating to granting certificates of public convenience and necessity may be of interest.
>
> "In Tweddle v. Michigan State Teleph. Co. 32 A. T. & T. Co. Com. L. 400, 409, it is said:
>
> "It is the evident purpose of the statute to as far as possible substitute regulation for competition. By the terms of the law a company may no longer construct lines upon the highways without this commission having first found that such telephone construction is justified by public convenience and necessity. The term "public convenience and necessity" is one frequently found in statutes requiring official action of a discretionary character promoting what may be termed 'public exigencies.' These can never be the subject of exact classification or definition because they are always questions of fact that are deduced from a variety of considerations."
>
> "In Re United Home Teleph. Co. 28 A. T. & T. Co. Com. L. 399, 401, it is said:
>
> "'The general purpose of the law requiring the issuance of a certificate of public convenience and necessity was to prevent the waste incident to a duplication of facilities."
>
> "* * * (2) It must be apparent from an examination of the statutes as construed from time to time that the law relating to the issuance of a certificate of public convenience and necessity was to prevent duplication of investment and economic waste."

With these expressions of the courts and of other commissions dealing with this subject in our mind, let us turn to the Alabama statute itself. If the plant construction here under consideration is an ordinary extension of an existing system in the usual course of business of the utility, then, as stated above, it is not necessary for it to apply to the commission for a certificate of convenience and necessity.

The commission takes judicial notice of its own records.

People ex rel. New York Edison Co. v. Willcox, supra.

From its records, the commission knows that the Alabama Power Company's Warrior Steam Reserve Plant is a part of the company's existing system and that the power produced at such plant goes into the transmission lines of the company and is available for use throughout its system. The installation of the third unit in this plant, or more properly speaking, the completion of the installation of the third unit in this plant, would certainly constitute no more than an extension of an existing system.

> "The term 'extension' conveys to the mind an enlargement of the main body, the addition of something of less import than that to which it is attached."

N. Y. Central & Hudson Ry. Co. v. Buffalo & Electric Co., 89 N. Y. Supp. 418, 421; 96 App. Div. 471; Words and Phrases (2nd Series) Vol. 2, page 413.

The determination of the present inquiry, therefore, would seem to turn upon the question as to whether such extension of the company's existing system is an "ordinary extension in the usual course of its business."

In determining whether it is in the usual course of business, the question should be decided not as to whether such a transaction would be usual in the general conduct of business throughout the community, but whether it is according to the usual course of business of the utility.

Words and Phrases, Vol. 6, page 5042.

It must be assumed, I think, that a public utility which has been well conceived will, under proper management and wise regulation, be expected to grow and will need to enlarge and extend its facilities. Especially is this true where the service which it renders is one universally demanded. In my judgment, therefore, the installation here involved is such an one as might

be expected to become necessary in the usual course of the utility's business.

It, therefore, remains only to consider what construction should be put upon the word "ordinary" as used in this context. This is, perhaps, the most difficult part of the whole question. Would the statute have meant the same thing, or would it have expressed the purpose of the Legislature if the word "ordinary" had been omitted? Under the rules of construction the word must be given some field of operation. Is it used as having reference to the amount of money necessary to be expended in making the extension, as to whether it is an amount frequently found necessary to be expended by the utility in making extensions to its existing system in the usual course of business. Is it used with reference to the amount of money to be expended in making an extension as respects whether the investment in plant and property would be such as to materially affect the rate base, and therefore the rates of the utility? Or is the word used to distinguish an extension found necessary to be made to an existing system in the usual course of business in order to enable the utility to provide better, more convenient, more efficient or cheaper service for the public then served by it, from an extension necessary to be made to extend the service of the utility into municipalities, communities or territory not then served? If we should accept the construction placed by the Illinois Commerce Commission upon the decisions of its Supreme Court in the Noble case and the Postal Telegraph case, we would take the view that the word "ordinary" is used to distinguish the extension made for the better service of existing consumers from an extension made into new territory to serve new consumers. I am unable to say that the meaning of the word should be confined to this extent. An extension required to better serve existing consumers might itself require such a large outlay in proportion to the rate base then existing as directly to affect the public. There is sound reason for taking the view that if an extension will necessitate an increase of rate, that the regulatory body should at least be consulted so that it might express its judgment as to whether the benefit to be conferred warranted the price which must be paid for it in increased rate.

But if the extension constitutes no more than the "completion" of an existing plant, or facility, and would not require an expenditure in such an amount as would affect the rate base and the rates, and if it did not involve the extension of the system into some municipality, community or territory not then served, but had for its purpose simply to enable the utility to maintain good service or to provide better service for its existing system and consumers, it would appear to me that within the reasonable construction of said Section 49, the extension would constitute an ordinary extension of an existing system in the usual course of business.

It must be understood that this opinion is based upon the company's written statement of facts furnished to the commission relative to the proposed construction, and upon such facts as are known to the commission from its own records. The opinion is rendered as applicable to the facts in this case. I would not undertake to say that a case may not arise where a reasonable construction of our statute will require that such certificate should be obtained for good reasons that are not evoked nor set out herein. The language of said Section 49 of our Utility Act is such as to make it difficult, if not impossible, to lay down rules which might reasonably be expected to cover every case.

The company's information relative to the installation here involved furnished to the commission does not indicate the probable cost of the installation. We will not, therefore, undertake to answer the inquiry with a simple yes or no, but beg to submit the above opinion for the consideration of the commission in this connection.

Yours very truly,
HUGH WHITE,
Special Assistant Attorney General.

October 19, 1923.

Hon. F. C. Marquis,
Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

We have your letter of October 15th addressed to the Hon. Harwell G. Davis, Attorney General, which has been referred by him to me for reply. In this letter you state as follows:

> "We are having an endless number of inquiries regarding the proper tag for cars operated by what is known as 'Drive It Yourself Companies.' The question is whether or not such cars operated by people who rent them from the 'Drive It Yourself Companies" should be required to have a commercial tag, or a private tag. If such cars are required to have a commercial tag would the scale of price for such commercial tag be the same as that which is fixed in Section 13 of House Bill 321, regular session, 1923, of the Legislature?"

In answer to your inquiry will say, as follows: There is no license provided for motor vehicles except in Sections 12, 13, 14, 15, 16, 17 and 18 of said House Bill 321, except demonstration tags under Section 21. In order to ascertain the license tax which shall be paid in the cases inquired about, we must carefully examine said sections and see in which category such cars fall.

In our opinion the use to which a motor vehicle is put or the kind of motor vehicle used must determine the license to be paid thereon. In case such companies should own a truck and hire such truck out for use, the license would come under Section 15 for motor trucks. If such companies hire an automobile to a person who uses it as a taxi, then the taxi license must be paid. Should such company hire a motor vehicle to be used as a jitney bus, then a license for a jitney bus must be taken out. But if such companies hire automobiles which are used by the persons hiring them solely for private use, then, in my opinion, the license must be taken out under Section 16, for a car kept for private use.

Such has been the construction of the law for the past four years, and the Legislature has re-enacted the license law with regard to automobiles without any substantial change so far as "Drive It Yourself Companies" are concerned.

We, therefore, think it advisable to adhere to the former ruling and practice in such cases.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

October 19, 1923.

Hon. F. C. Marquis,
Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of October 11th addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You ask to be advised whether or not tags can be transferred from one car to another, or whether if a person sells an automobile which has been used as a car for hire or a truck, could such person transfer with the car he sold, the license tag on said car.

In answer to your inquiry will say that it is my opinion that House Bill 321, approved September 13, 1923, was intended to take the place of the License Act of 1919 with reference to automobile and motor trucks.

From a careful examination of this law, we find only one provision with reference to the transfer of a license from one car to another, or from one person to another. The provision in the law of 1919 with reference to transferring a motor vehicle and the license was not brought forward into said House Bill 321. The provision for transferring a license from one person to another or to another car, is in words as follows:

"Persons paying an automobile license may have the same transferred to any other person or to any other car, provided the same is not of a greater horsepower, by applying to the Judge of Probate who issued the same, and it shall be his duty to make a record of the transfer which shall be in writing, provided, however, that the license in this Act required to be paid shall not become delinquent until after the expiration of three days from the date of purchase of a new motor vehicle."

This authority for transferring a license from one car to another or from one person to another is found in Section 12 of said Act in connection with automobiles kept for private use, and in my opinion, is intended to be confined to licenses for automobiles kept for private use, for the reason that the test of transfer and use upon another car is that the car to which it is transferred shall not be of greater horsepower than the car for which the license was originally obtained.

Since the license on motor vehicles other than automobiles kept for private use is rated on some other test than the horsepower, and since we find this provision only in Section 12 where the license on automobiles kept for private use is treated of, we are of the opinion that it was intended to apply only to such motor vehicles.

We, therefore, advise that a license taken out for a truck, or for a taxi, or any motor vehicle not measured for license by horsepower, cannot be transferred from one person to another, or from one car to another, neither can it be transferred from one person to another when such motor vehicle is sold by the owner to another person, that provision in the old law having been omitted from the present law.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

October 22, 1923.

Hon. B. T. Roberts, Member,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of October 10th addressed to the Hon. Harwell G. Davis has been referred by him to me for reply.

You wish to be advised if motor vehicles carried in stock by a dealer should be assessed as merchandise, that is, as part of the average stock assessible under sub-section (d) of Section 5 of the Revenue Bill of 1919.

In reply to your inquiry will say, that in my opinion, the Act relating to license and taxation of automobiles, approved September 13, 1923, places automobiles for taxation in a class by themselves. Section 19 of this Act provides that every automobile owner shall show that he has paid the tax on his automobile for the past year when he applies for a license. To construe this law so as to make a dealer pay an ad valorem tax on automobiles as a part of his stock in trade, and then make the purchaser pay a tax on the same automobile for the same year, would exceed the constitutional limit as to State and county taxes on such automobile. Hence, it is my opinion, that automobiles are to be taxed to the person who wishes to obtain a license for such automobile, or he must show that a prior owner has paid the tax on the specific automobile for which he wishes to obtain a license.

In other words, the present law, in my opinion, requires that the tax be paid upon each separate automobile, and, therefore, it is my opinion that automobiles should not be considered as a part of merchandise of a dealer for the purpose of taxation. It is true that each dealer may have other capital in his business besides the automobiles in which he is dealing. He may carry parts of automobiles or automobile accessories. He may keep in his possession a certain amount of money for the employing of help, etc., all of which would constitute a part of the capital employed in his business. But, in my opinion, it was the legislative intent that automobiles should not be taxed as a part of the stock of an automobile merchant.

Yours very truly, A. A. EVANS,
Special Assistant Attorney General.

October 22, 1923.

Hon. B. T. Roberts,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of October 2nd addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You make the following inquiry:

> "In the case of deeds carrying unpaid purchase money and conditional sales of personal property, it appears to be necessary under the recent "DEED TAX LAW" to collect both a mortgage tax and deed or sale tax. Please advise me if this is correct and if it is necessary to make two certificates of the payment of these taxes, one for mortgage tax, and the other deed tax on the same paper.
>
> "Will you please advise this commission relative to this inquiry? This, of course, refers to House Bill 845, enacted at the regular session of 1923."

In answer to your inquiry will say as follows:

1st. In case of deeds carrying unpaid purchase money, House Bill No. 845, approved October 1st, 1923, requires that a deed filing tax be paid measured by the amount of the cash payment. As to the deferred payments, for which there is a vendor's lien, a mortgage filing tax must be paid measured by the amount of such deferred payments. To state a concrete case: A sells to B a certain parcel or tract of land for a consideration of two thousand dollars, one thousand dollars of which is paid cash and one thousand dollars is to be paid one year from date of sale; a deed is executed at date of sale reciting the facts as to consideration and conveying said property. B offers this deed for record. He must pay a deed filing tax of 50 cents on each $500.00 of the cash paid by virtue of the provisions of said House Bill No. 845, in amount $1.00, and he must pay a mortgage filing tax of 15 cents on each hundred dollars of the one thousand dollars deferred payment, for which there is a vendor's lien, amounting to $1.50 by virtue of Section 4 1-2 of House Bill No. 294, approved August 22nd, 1923.

House Bill No. 845, in cases where there is no deferred payment, measures the tax by the actual value of the property conveyed and not by the amount of the actual consideration; but this is not the case where part is paid in cash at the time of the execution of the deed and part is to be paid at some future time; in such a case the actual amount of the consideration controls; the deed filing tax being based upon the amount of cash paid, and the mortgage filing tax based on the actual amount of deferred payment for which there is a vendor's lien.

I arrive at this conclusion as to the filing tax on deeds where part of the purchase money has been paid and part is deferred, from the following provision in said House Bill 845:

> "Provided, however, that this Act shall not be so construed or enforced as to require the payment of privilege tax herein provided on mortgages, deeds of trust or other instruments in the nature of a mortgage or deeds or other instruments with vendor's lien except as to that part of the purchase price, which is paid in cash or other articles of value and which pay no other privilege tax for recording."

By reason of the said provision above quoted from House Bill No. 845 we are of the further opinion that, in case of a conditional sale of personal property which is reduced to writing and offered for record, a deed filing tax must be paid based on the amount of cash payment and a mortgage filing tax must be paid based on the amount of the deferred payments. Such an instrument is in the nature of a mortgage as to the deferred payment and of a bill of sale as to the cash payment.

I am of the opinion that there should be endorsed the fact of payment of both license taxes on such an instrument when filed.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

October 23, 1923.

Hon. Huey R. Lee,
Judge of Probate,
Clayton, Ala.

Dear Sir:

We have your letter of October 19th in regard to license in cities of over or under five thousand inhabitants.

In reply will say that it is our opinion that where a license is controlled by the number of inhabitants within a city, a census taken under the Act approved September 17, 1919, beginning on page 465, Acts 1919, will control, rather than the census of the United States taken prior thereto.

We find the following language in said act which confirms us in this view:

> "That the census purporting to be a true and correct enumeration of the inhabitants residing in the said cities and towns is, and shall be ratified, confirmed and validated, and the report of said census which has been or may hereafter be filed shall for all purposes govern and be taken as the true and correct census for all such cities and towns in the State of Alabama, under seven thousand inhabitants when so taken."

It seems quite evident that if such census is to govern for all purposes, it will govern for the purpose of determining license taxes where such taxes are based on the population of the cities, especially since this Act was passed and approved subsequent to the General Revenue Act, in which the test is the last Federal census.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

October 25, 1923.

Hon. A. E. Jackson,
Superintendent of Banks,
Capitol.

Dear Sir:

Replying to your inquiry as to what salary your office assistant is entitled, we advise as follows:

The general salary bill approved September 29, 1923, provides that the salary of the office assistant in the office of the Superintendent of Banks shall be $2,400.00 for every year. The bill amending the Banking Department Bill, approved on the same date, provides that the salary of the office assistant may, in the discretion of the Banking Board, be $3,000.00 per year. These two provisions are irreconcilable.

We are of the opinion, however, that the Act relating particularly to the Banking Department should control in so far as the two Acts are in conflict. This construction is upheld by the following statement of the case:

> "A subsequent statute which is general does not repeal or abrogate a former statute intended to operate upon particular subjects."
>
> 36 Cyc. 1092.

Although both of these laws are general as distinguished from special and local laws, we are convinced that the Banking Department law, being confined and restricted to the regulation of the Banking Department, is a "statute intended to operate upon particular subjects" within the meaning of the above quoted principle.

The Legislature, when considering the law regulating the Banking Department, concentrated its attention upon that one particular department, its officers, employes, their salaries and duties. Whereas, when considering the general salary bill, the attention was divided between the salaries of all State officials and employes. The fair presumption is, we think, that the law receiving undivided attention would be the expression of the

legislative intent. And the legislative intent in such cases is always controlling.

36 Cyc. 1069.

Our conclusion is, therefore, as above stated.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 26, 1923.

Hon. Thos. W. Coleman,
Anniston, Ala.

Dear Sir:

Your letter of October 11th, 1923, addressed to Hon. Harwell G. Davis, Attorney General, has been turned over by him to me for reply. Your inquiry is as follows:

> "In case of foreclosure of mortgage and deed to mortgagee, who purchases at the foreclosure sale, should the deed tax be based upon the full value of the property sold and conveyed in the foreclosure sale? In other words, in case the mortgagee holds a mortgage for $50,000.00 and on foreclosure bids $75,000.00, should the tax cover the full amount bid, if that represents the value, or should it cover the difference between the mortgage debt and the value of the property?"

In order to answer your question logically it becomes necessary first to consider certain features of the Act approved September 14th, 1923, entitled "An Act to impose a license or privilege tax on all deeds, bills of sale and other instruments of like character admitted to record in the Probate Offices of this State." This Act, in part, reads as follows:

> "No deed, bill of sale or other instrument of like character which conveys any real or personal property, or which conveys any interest in any such property, shall be received

for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit, upon all such instruments which are executed to convey real or personal property situated in this State of the value of five hundred dollars or less there shall be paid the sum of fifty cents, and upon all such instruments executed to convey real or personal property situated in this State of more than five hundred dollars in value there shall be paid the sum of fifty cents for each five hundred dollars or fraction thereof in value of property conveyed by such instrument."

It is my opinion that this Act intends to deal with actual conveyances of real and personal property or of some interest in real or personal property. Though a paper writing may be in form a deed, if it shows on its face that it does not convey real or personal property or any interest therein, then, in my opinion, such paper writing is not subject to the privilege tax provided for in said Act. Where a mortgagee of real estate forecloses his mortgage, under a power of sale contained therein, and bids in the property at the foreclosure sale, the paper writing which purports to convey the property so bid in by him to him, in my opinion, conveys neither real nor personal property, nor any interest therein. The legal title to the property was already in the mortgagee and the foreclosure sale had the effect of cutting off the equity of redemption that was in the mortgagor. The facts of the foreclosure sale may rest in parole and still this equity of redemption is effectually cut off. A paper writing purporting to convey to a mortgagee the property already conveyed to him by the mortgage which has been foreclosed and the property bid in by the mortgagee, does not convey any real or personal property or any interest therein. Such a paper writing is nothing more than a written memorial of the foreclosure of the mortgage, no matter what its form may be, and is just as effectual for every possible purpose if it recites the facts and does not contain any words of conveyance whatever. This view is, in my opinion, fully sustained by the following authorities:

Cooper v. Hornsby, 71 Ala. 64;
Drake et al v. Rhodes, 155 Ala. 501;
Newburn's Heirs v. Bass, 82 Ala. 622;
Tipton v. Wortham, 93 Ala. 321;
Durden v. Whetstone, 92 Ala. 480;
Jackson et al. v. Tribble, 156 Ala. 486;
Lindsay v. Morrison, 100 Ala. 551.

It is, therefore, my opinion that no privilege tax is required for filing such a paper writing for record.

Of course, a different rule would obtain where property is bid in at a foreclosure sale by a person other than the mortgagee and deed is made to him. In such a case the value of the entire property must be considered, because there is a conveyance of the property to the purchaser, who before such sale did not have the legal title to the property. Such a sale has the effect of destroying the equity of redemption in the mortgagor, and the conveyance, if properly drawn and executed, conveys title from the mortgagee to the purchaser. All of this, in my opinion, is perfectly logical and fully sustained by the authorities cited.

It is true that in the case in the case of Jackson et al. v. Tribble, 156 Ala. 488, our Supreme Court held that such a deed could be executed and might be introduced in evidence. At the top of page 489 the opinion says, "We have no decision on the question in this jurisdiction." In Sanders v. Cassady & Blackwell, 86 Ala. 246, it was left open. The reasoning employed by the Massachusetts Court, in Hall v. Bliss, supra, is convincing to us that, the mortgagee being given the power to purchase at his own sale, he may, if he becomes the purchaser, make a valid conveyance to himself in that capacity as donee of the power in the mortgage."

Further down the same page we find the following:

> "But, suppose there had been no deed executed to the mortgagee, who purchased at the sale; then, according to the common law, the legal title was already in him, and without a deed he might maintain ejectment. 2 Jones on Mortgages, Section 1660.

"Furthermore, the sale cut off the equity of redemption as effectually without as with a deed, and left the mortgagor only the statutory right of redemption, which might be exercised within two years from the sale."

The court was mistaken when it said "we have no decision on the question in this jurisdiction." The case of Lindsay v. Morrison, 100 Ala. 551, specifically stated that no such conveyance could be made and all the other cases herein cited show that such a deed conveys no right, title or interest in the mortgaged lands. The mortgage conveyed the legal title, and the sale cut off the mortgagor's equity of redemption, leaving nothing in the mortgagor but the statutory right of redemption. This statutory right remains even when such a writing is executed. Even in the said case of Jackson et al. v. Tribble, as shown above, it is stated that the mortgage conveyed the legal title from the mortgagor to the mortgagee and that the sale cut off the equity of redemption. What then did the so-called deed from the mortgagee to himself convey? Nothing. This so-called deed does not affect any title or interest. As to conveying anything, it leaves the parties exactly as they were before its execution. It is simply a written memorial of the foreclosure of the mortgage and the purchase at the sale by the mortgagee. It is evidential merely of facts as to the foreclosure, but it conveys nothing.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

October 27, 1923.

Hon. John W. Abercrombie,
Superintendent of Education,
Capitol.

Dear Sir:

You request advice from this office as to what provision should govern the salaries of the State Superintendent of Education, the executive officer of the Board of Education, the members of the Board of Education, and certain employes of the State Department of Education.

The salary of the Superintendent of Education was fixed by the General Salary Bill of 1919, Acts 1919, page 1010, Section 25, at $4,000.00, per annum, and must be paid as provided by that Act.

The compensation of the executive officer of the State Board of Education, heretofore fixed by the Board of Education, and which has been upheld by the Attorney General in an opinion reported in 1918-20 Reports, page 481, must be paid out of the appropriation of $17,500.00, provided by House Bill No. 778, approved September 29, 1923.

The salaries of the employes of the State Department of Education heretofore provided for in the Act making appropriations for the ordinary expenses of the Executive, Legislative and Judicial Departments of the State, and the expenses and compensation of the members of the State Board of Education are made payable out of the appropriation of $17,500.00, above referred to, by its express provisions.

The employes of the State Department of Education whose salaries are made payable out of the $17,500.00 appropriation are: a chief clerk, two bookkeepers, one statistician, one stenographer and file clerk and two stenographers.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 29, 1923.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

Your recent written request to the Attorney General for advice by opinion as to the amount of the fees to which the Sheriff is entitled to receive for feeding a prisoner confined in the County Jail under a writ of attachment by order of the court, has been referred to me for reply.

> "The fees which accrue against defaulting jurors, witnesses and bail are to be paid by them respectively, unless excused by the court."

See Section 6646, Code of 1907.

"Sheriffs are entitled to the following fees and allowances in criminal cases, that is to say: For feeding each prisoner confined in jail for contempt of court, or under attachment, or as a witness * * * to be paid by the prisoner or by the State, if he is insolvent, for each day * * * $0.30."

See Section 6638.

No prisoner shall be regarded as insolvent without the return of "no property found" upon execution issued against him, in the particular case; and no execution shall be so returned within less than thirty days from the time it goes into the hands of the Sheriff.

See Section 6632.

It is within the power and jurisdiction of the court to compel obedience to the process issued from the court, and to punish for a failure or refusal to obey such process, and a defendant or witness neglecting or refusing to obey the process of the court served upon him is in contempt of the process of the court, and is liable to punishment for contempt.

Ex parte Dement 53 Ala. 389-398.
Mussina v. Bartlett 8 Port. 277.

That the court may excuse a defaulting witness, and not impose costs upon him can hardly be doubted. When the court fails to impose costs upon a witness, and no judgment is authorized against the witness for the costs by the court, it is my opinion, this failure to specify that the witness is taxed with the costs is tantamount to an affirmative order that the winess is excused from the payment of the costs. In legal effect, the witness is excused by the court from the payment of the fees. No judgment against him, and neither could an execution be issued against him for the costs.

Under such circumstances, with no judgment against the defaulting witness for the fees, how is the Sheriff to be paid for feeding such prisoner? The Sheriff would not be authorized to collect the feed bill from the prisoner without an order and judgment of the court that the fees should be paid by the witness, and the Sheriff certainly could not return an execution "no property," against such prisoner, if he were insolvent, for he could have no process in his hands.

Section 2 of the Act of the Legislature of 1920, page 28, makes it the duty of the Sheriff of the county, except as otherwise provided by existing laws in person, or by his deputy jailer, to feed the prisoners in the jail under his jurisdiction in accordance with the terms of said Act, and Section 3 thereof provides that feed for prisoners in jails, except as otherwise provided by existing laws, shall be paid for by the State according to the following scale. (Then follows scale).

It is my opinion that when the defaulting witness is expressly or impliedly excused by the court from the payment of the fees, which also includes the feed bill, that the payment of the feed bill should be borne by the State, and at the same rate as he is paid for other prisoners whom it is his duty to feed. In such a case he should be paid at the rate as provided by the Act of 1920, page 28. I am of the opinion, further, that a witness placed in jail under the provisions of Section 7613 of the Code of 1907, should be fed by the Sheriff, and that the scale as provided by Acts of 1920 governs.

This is in reply to that part of your inquiry as to a witness placed in jail in default of bail, or on refusal to make bond, under the law relating to preliminary proceedings.

Yours very truly,

O. B. CORNELIUS,

Assistant Attorney General.

October 30, 1923.

Hon. J. M. Moore,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:

After looking at the Act making appropriation to the State Live Stock Sanitary Board for the eradication of cattle ticks (Acts Special Session 1923, page 17) and the provision abolishing such board (Agricultural Code, Article 4), I have concluded that the unexpended balance of the above appropriation reverts to the State Treasury, except so much of such unexpended balance as may be necessary to settle liabilities incurred by said board prior to September 30th, 1923.

The State Board of Agriculture, superseding the State Live Stock Sanitary Board (Agricultural Code, Article 4), may by filing a schedule of all liabilities incurred and unpaid prior to September 30th, 1923, within one month after such date, apply any unexpended balance of the appropriation to the settlement of these unpaid liabilities (Acts 1919, page 994, Section 55).

The appropriation to the State Live Stock Sanitary Board was "to be available from the 1st day of April, 1923, to the first day of October, 1923." This was intended to include the remainder of the fiscal year by express provision of the Code, (Section 614, Code 1907). The fiscal year ends September 30th, 1923. Hence the unexpended balance of the appropriation was made to revert under Acts 1919, page 994, Section 55, with the exception above set out before the provision abolishing the board, and superseding the State Board of Agriculture became effective.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 31, 1923.

Mr. T. F. Simpson,
Tax Assessor,
Tuscumbia, Ala.

Dear Sir:

Your letter of October 26th, 1923, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if a person who resides on a United States Government Reservation and owns, on such reservation, an automobile for the running of which, on the public roads of your county, he desires to take out a license, is it your duty to give him a certificate of exemption from ad valorem taxes in order that he may get a license without having to pay such ad valorem tax.

In reply to your inquiry will say that a United States Government Reservation acquired by purchase and used as a reservation, is not subject to the jurisdiction of the State, and property with its situs on such reservation is not subject to ad valorem tax by the State. Where an automobile had its situs on such a reservation on October 1st, 1922, there is no ad valorem tax due thereon by the State for the last preceding year. If owned by an individual and is run over the public road of the county outside of such reservation, such individual must pay a license on such automobile. Subsection (el) of Section 19 of House Bill 321, approved September 13, 1923, provides as follows:

> "The Probate Judge is authorized to issue a motor vehicle license upon a certificate of the Tax Assessor certifying that there is no ad valorem tax on said motor vehicle for the preceding year."

Such being the law and the facts, we are of the opinion that in such a case you should give the owner of such a motor vehicle a certificate stating the fact that there is no ad valorem tax due on such motor vehicle for the preceding year. Of course, a person now residing on such reservation may own a car that did not have its situs on such reservation on October 1st, 1922, but was somewhere else in this State subject to taxation, but

was not assessed. In such case the taxes for the preceding year would have to be paid, as you could not say truthfully, in such case, that no ad valorem taxes were due on such automobile for the preceding year.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

October 31, 1923.

Judge G. P. Butler,
Opelika, Ala.

Dear Sir:

We have your letter of October 27th with reference to the recording of conditional sales contract where part of the purchase money is paid and part is to be paid in deferred payments. You state two cases in which such contracts have been presented to you for record. One is a sale from Burrus Motor & Tractor Company to Vastie Eiland of an automobile for $150.00; fifty dollars cash and one hundred dollars deferred payments. This contract was made in Columbus, Georgia, and the property was brought from there into Lee County, Alabama, after purchase. You wish to know if these contracts are subject to a filing tax under House Bill 845 passed at the recent session of the Legislature.

In reply will say that in construing any statute it is necessary to look to the entire statute to find out the legislative intent. I notice that you quote the first few words of the statute and that you conclude from those words that it was not the legislative intent to charge a filing tax under said House Bill 845 on conditional sales contracts. You also seem to be of opinion that said House Bill had reference to the location of the property sold at the time of the sale instead of at the time of filing the contract for record.

In answer to your inquiries will say that it is my opinion that it was the legislative intent to require a filing tax on such instruments under said House Bill 845 to be measured by the cash payment and that it was the legislative intent in Section 4 1-2

of House Bill 294 to require a mortgage filing tax on such instruments as to the deferred payments. In other words, in the first case mentioned, there would be a filing tax under House Bill 845, on account of the cash payment, of fifty cents, and a mortgage filing tax, on account of the deferred payment, of 15 cents.

In the first part of Section 1 of said House Bill 845 we find that it says "No deed, bill of sale or *instrument of like character* which conveys any real or personal property *or any interest therein," etc.* It is my opinion that such conditional sales contracts do convey an interest, although the legal title is retained. It conveys at least an equitable interest. Such instruments have long since been regarded as in the nature of a mortgage where the purchaser gets an equity while the seller retains the legal title to secure the deferred payments. In the case of conditional sales contracts this equity is conveyed by the contract; hence such a contract does convey an interest in personal property. In the case of a mortgage, the mortgagor conveys the legal title to the mortgagee to secure the debt and retains the equitable interest. In the case of the mortgage the equitable interest is not conveyed and a mortgage filing tax is required measured by the amount of the mortgage debt. No filing tax under said House Bill 845 is required on mortgages as you will see by reading next to the last sentence of Section 1. This sentence reads as follows:

> "Provided, however, that this Act shall not be so construed or enforced as to require the payment of privilege tax herein provided on mortgages, deeds of trust or other instruments in the nature of a mortgage or deeds or other instruments with vendors lien, except as to that part of the purchase price which is paid in cash or other articles of value and which pay no other privilege tax for recording."

Conditional sales contracts where part of the purchase money is paid in cash and the balance is to be paid in deferred payments, and the legal title is retained in the seller to secure the deferred payments are in the nature of a mortgage as has been often decided by our Supreme Court, and no filing tax other than that required by said House Bill 845 is required to be paid for filing such contract for record except the mortgage filing

tax based on the deferred payments. It, therefore, follows that in the case of such a conditional sales contract there is due a filing tax under said House Bill 845 measured by the cash payment as to the equitable interest conveyed, and a mortgage filing tax, measured by the deferred payments, must be paid under Section 4 1-2 of House Bill 294 passed at the recent session of the Legislature.

Hoping that I have made clear to you my former ruling of which you spoke in your letter, I am

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

November 2, 1923.

Hon. D. H. Edington,
Mobile, Ala.

Dear Sir:

The Attorney General is in receipt of your recent request for an opinion as to the validity of the Act of the Legislature approved September 27, 1923, authorizing Boards of Revenue or Courts of County Commissioners to pay to the recorder in cities of not less than 60,000 and not more than 150,000 population, for ex-officio services rendered by him in the trial of cases in the Recorder's Court wherein there is charged a violation of the laws of the State of Alabama.

It is my opinion that this Act is general, and not local, although now applicable only to Mobile County.

State ex rel. Gunter v. Thompson et al, 193 Ala. 561;
Covington v. Thompson, 142 Ala. 98;
Griffin v. Drennen, 145 Ala. 128;
Crenshaw v. Joseph, 175 Ala. 579;
Board of Revenue of Jefferson Co. et al, vs. Huey et al, 195 Ala. 83;
State ex rel. Attorney General v. Sayre, Judge, 142 Ala. 641.

The decision in the case of Leigeber v. State, 17 Ala. App. 551, defines a recorder as follows:

> "Under Code, 1907, Section 1213, 'recorder' as used in the Code, when used with reference to jurisdiction and officers holding court, means any person authorized to hold Municipal Court. In Section 1221 of the Code it is provided: 'The recorder shall have original and concurrent jurisdiction with the County Court or court of like jurisdiction, of all misdemeanors committed within the city or town, or within the police jurisdiction thereof."

Chief Justice Anderson, in the case of Draper v. State, ex rel Patillo, 175 Ala. 547, on the question as to whether the City Commissioner of Hartselle, Ala., was a State Officer within the meaning of Section 1474 of the Code of 1907, said:

> "Article 14 of the Municipal Law (Code of 1907) in providing for the enforcement of the law and the administration of justice, defines a 'recorder' to be any person authorized therein to hold Municipal Court, and in the absence of any such recorder authorizes any Councilman to preside over the court, and gives him the same power and authority therein granted to recorders. Section 1215, in defining the jurisdiction of recorders, also gives to the office the powers of an ex-officio Justice of the Peace, except in civil matters, and also provides that in certain instances any Councilman may act as recorder, with his full power and authority." * * *
>
> "It may be conceded, however, for present purposes, that the office in question is strictly a municipal one, and not a State or county one, within the provision of Section 1474 of the Code * * *
>
> "The majority of the court are of the opinion that the vacancy in question was not of a State office."

Justice De Graffenried, speaking for the Supreme Court, in State ex rel Wilkinson, et al v. Lane, 181 Ala. 651, after elaborately discussing the origin and history of towns and cities and the powers and authorities of the officers thereof, says:

"In truth, we do not see how, unless the historical development of municipal law is entirely discarded, it can be held upon sound reasoning that, in a State with a constitutional and statutory history like our own, a mere Municipal Officer can be held to be, within the meaning of our constitution, an officer of the State."

"Recorder has been given jurisdiction of offenses as for violation of misdemeanor statutes, as well as for violation of municipal ordinances * * * and the recorder is by statute made ex-officio Justice of the Peace and Judge of the County Court."

City of Birmingham v. Edwards, 93 So. 233;
Ex parte Rogers, 12 Ala. App. 218;
City of Birmingham v. Brown, 13 Ala. App. 654;
Dowling v. City of Troy, 1 Ala. App. 508;
Adams v. City of Troy, 1 Ala. App. 544.

The Constitution does not prohibit the Legislature, by legislative act, from using the general fund derived from the levy under the general power of taxation, not to exceed one-half of one per centum, as mentioned in the first part of Section 215 of the Constitution of 1901, for purposes not exclusively and distinctively municipal.

See Commissioners Court v. State, 61 So. 431;
State ex rel City of Mobile v. Board of R. R. Com. Mobile Co., 180 Ala. 489;
Board of Revenue of Jefferson County v. State ex rel City of Birmingham, 172 Ala. 153.

The Court of Appeals had before it the question as to the liability of the county to pay for an attorney employed by said county to prosecute or assist in prosecuting a criminal case against a defendant charged with violation of the provisions of a local road law for the county. That part of the opinion most pertinent to this Act is as follows:

"It must be taken as settled in this State that counties, being governmental agencies of the State, can only be made chargeable with and liable for such claims and demands as the law imposes on them, or authorizes or empowers them to contract for. This power may be derived either from an *express authorization of the law, or by necessary implication* * * *

"The case that the appellant was employed by the Court of County Commissioners to assist in the prosecution of as an attorney, was a criminal proceeding required to be carried on in the name of and by the authority of 'The State of Alabama' (Const. Section 170), and it was the duty of the Circuit Solicitor to prosecute this criminal proceeding carried on in the name and by authority of the State in the Circuit Court. On appeal, if such a proceeding was had, it was the duty of the Attorney General to attend and represent the State in the prosecution. In other words, regular government agencies and officers are provided by law to manage and look after the interests of the prosecution in behalf of the State."

"The Court of County Commissioners could not fasten upon the county a binding liability to pay for the services of the appellant in prosecuting this case unless it was empowered to create the debt for such services, *by express* authority, or as a necessary implication from some authority given."

Walker v. Bridgeforth, County Treasurer, et al, 9 Ala. App. 257.

Following the line of reasoning pursued in the foregoing cited cases I conclude the recorder is not a county officer, but is an officer of the municipality, but that general funds of the county may be paid by the county, when authorized, as by this Act, by the Legislature, to said recorder, as to any other individual, for ex-officio services rendered by said recorder to said county.

"Ex-officio services are those which the law annexes to a particular office, and requires the incumbent to per-

form without providing specific or special compensation therefor."

City of Birmingham v. Hawkins, 94 So. 62.

Section 68 of the Constitution of 1901, provides that no county or municipal authority shall have power to increase the fees and compensation of any county or municipal officer during their terms of office excepting allowances made for ex-officio services to *county officers.* Since the recorder is not a county officer within the meaning of Section 68 of the Constitution, in my opinion, this allowance for ex-officio services could not be paid to the incumbent at the time of the passage of the Act during the term of office to which he was elected or appointed, if he has a fixed term of office.

If there is a specific compensation or fee in the State cases which could be lawfully charged by the recorder on conviction, then the county would not be authorized to pay also for said service, as ex-officio service.

The way the Act reads, I am of the opinion that in conformity to the decision of the Supreme Court in Macon County v. Abercrombie et al., 63 So. 985, the $900 mentioned in said Act is the maximum beyond which the governing body of the county could not go, but that it is not the minimum.

Also, that the Act allows or permits the same to be paid, but that it is not compusory, leaving the question of payment to the governing body of the county.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

November 2, 1293.

Hon. George W. Ellis,
State Treasurer,
Capitol.

Dear Sir:

Your letter of the 1st instant requests to be advised as to the validity of the warrant No. 40771, dated October 31st, 1923,

in favor of J. R. Waldman for two hundred dollars as an emergency clerk; also the warrant No. 40832 of October 31st, 1923, in favor of Miss Ruth Dunn, as an emergency clerk in the military department.

Section 25 of the Act approved September 29th, 1923, providing for the fixing of salaries and compensation of certain State officials, appointees and employes of the Capitol, provides that:

> "Whenever the employment of any clerical assistance in addition to that prescribed by this Act in any of the State departments may become necessary in the transaction of the public business,"

the same may be employed upon the head of the department certifying the same to the president of the State Board of Convict Supervisors, and securing the approval of such president and the Governor to such employment.

Whether or not the employment of such extra clerical help is necessary is a matter which is to be determined by the head of the department, the president of the State Board of Administration, and the Governor, and whenever in their discretion the employment is made, it thereby becomes a legal charge against the State.

I have examined the files of the Auditor's office and find that the employment of Mr. Waldman and of Miss Dunn has been authorized in strict accordance with this provision of the law. The warrants, therefore, drawn in their favor are legal.

You also request to be advised as to the legality of the warrant drawn in favor of Miss Ila Ringstaff for one hundred twenty-five dollars as pension clerk, and the warrant drawn in favor of Miss Beulah Gibbons for ninety dollars in the military department.

The Act to which reference has heretofore been made provides in Section 4, Subdivision 6, for the employment of "one pension clerk whose salary shall be eighteen hundred dollars for every year."

Subdivision 5 of Section 16 of said Act provides for the employment by the Adjutant General of "two stenographers,

whose salary shall be twelve hundred dollars for every year." Section 26 of the same Act provides "that the salary or the compensation fixed by this Act is the maximum amount to be paid the employe whose salary or compensation is hereby fixed; the officers or person authorized to make the employment of persons whose salary or compensation are hereby fixed, may make such employment at a sum less than the salary or compensation herein prescribed."

I am advised by the heads of the departments authorized to make the employment in each of these cases that the employment of Miss Ringstaff and Miss Gibbons has been in accordance with the provisions of said Section 26, made at less than the maximum amount prescribed in the Act. I am of the opinion, therefore, that these warrants are valid.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

November 7, 1923

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Director of the State Department of Archives and History has requested me to advise you whether or not the salary of the extension librarian of that department is payable out of the appropriation made for the maintenance and expenses of the Department of Archives and History.

The appropriation of thirteen thousand dollars for each year made by the bill approved September 29, 1923, House Bill 1005, is expended by the trustees of that department for such purposes as they deem necessary for the proper conduct of the department.

This would authorize the employment of the extension librarian, and her salary would be such an expense as would be a proper charge against the said appropriation of thirteen thousand dollars.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

November 9, 1923.

Hon. Hunter Armstrong,
Register,
Birmingham, Ala.

Dear Sir:

Hon. Harwell G. Davis, Attorney General, has referred to me your letter of October 27th for reply.

Your inquiry calls for a construction of Section 2 of House Bill No. 947, approved September 29, 1923. The Act amends that certain Act approved September 29, 1919, as found on page 825 of said Acts. Section 1 in the amended Act is the same as Section 1 in the Act amended. Sections 2, 3 and 4 are new parts added by the amendment. The Act as amended provides for a library tax of $2.00 for maintaining the law library for the Circuit Court of Jefferson County for each case filed in the Circuit Court but excepts cases filed by municipalities for the purpose of selling property for the collection of taxes due such municipalities.

It is provided in said Act that it is retroactive so far as such excepted cases filed since the passage of the original Act.

As to the Act having a retrospective operation, I am of the opinion that this Act is not such a one, that the giving of a retroactive effect would violate Section 22 of the constitution. In the case of New England Mortgage Security Company v. Board of Revenue of Montgomery County, 81 Ala. 110, it is expressly decided that the General Assembly has power to impose taxes having a retroactive operation, and that to give an Act retroactive operation there must be found therein clear and indisputable expressions of such legislative design. If the Legislature in imposing taxes may do so retroactively, surely it would have the right to relieve from the imposition of a tax and give the same retroactive effect.

Therefore, it is my opinion that under the provisions of Section 2 of said Act, said municipalities are exempt from payment of said library tax from September 29, 1919.

"Statutes authorizing the collection of back taxes, and statutes remitting taxes have been held valid."

8 Cyc. page 1022, Subdivision d.

Construing a statute repealing a law providing for the payment of $200.00 per annum to the treasury of the Fire Department Association of Mobile, and the effect said repealing law had upon said sums past due at the time of the repealed Act, the Supreme Court of this State in the case of Medical College of Alabama v. Mildon & Sons, 46 Ala. 603, said:

> "It is not strictly a tax on account of the disposition made of it, and because other provision is made in this State for the taxation of these agencies. It must, however, be referred to that head, and it is a quasi impost or tribute exacted by the State and appropriated to the benefit of this college. * * * When a statute is repealed, it must be considered, except as to those transactions which are passed and closed, as if it never existed. Rights of action and other executory rights arising under a statute are said to be vested, but unless they amount to a contract, and the statute being simply repealed the very stock on which they were grafted is cut down and there is no rule of construction under which they can be saved."

There was no contractual relation between the county and the litigant, no consideration had entered into the transaction which could give it the element of a contract between the county and the municipality, therefore, it cannot be said the Act impairs the obligation of a contract, and is for that reason unconstitutional.

My attention is called to the last sentence in Section 2, reading as follows:

> "That in the event any Register of the Circuit Court in such counties has failed to collect said library tax, he and the sureties on his bond are relieved from any liability whatever for the same."

This sentence does not apply alone to the library tax due heretofore on or from cases filed by municipalities for the pur-

pose of selling property for the collection of taxes due such municipalities. If so it would mean no more than that the giving a retroactive effect to Section 2 exempts municipalities from the payment of said library tax as specified in said Act and that the Register having failed to collect, would not be required to pay the same. But as written, it does not limit the same to such excepted cases, but would apply, in my opinion, to all cases, and attempts to relieve the Register of the Circuit Court from performing the duty which the law by said Act required him to perform. As to relieving said register from having failed to collect said library tax from any liability whatsoever, also relieving his sureties on his bond, it is my opinion that said part of said Act is violative of Section 100 of the Constitution of 1901.

As to the library tax on cases filed by municipalities for the purpose of selling property for the collection of taxes due such municipalities, since the same is specifically excepted by Section 2, it is my opinion that the Register of the Circuit Court would not be required to collect said tax.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

November 15, 1923.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General has referred to me your written request for an opinion as to the effect of the Act of the Legislature, House Bill 944, No. 513, approved September 29, 1923. Section 1 reads as follows:

> "Section 1. When the plaintiff is the successful party in any cause heretofore or hereafter filed in the Circuit Court of any county in the State having a population of more than two hundred thousand according to the last or any subsequent Federal Census, and execution against the

defendant is or has been returned 'no property found,' the clerk of the court may issue execution against the plaintiff in the name of the clerk for all the costs created by the plaintiff; but the clerk shall not be required to issue execution against the plaintiff under such circumstances; provided that all other laws relating to the issuance of executions in such counties shall remain in force."

The facts as I understand them are as follows:

It is provided by Act of 1915, approved September 14, 1915, (Local Laws of Jefferson County compiled by W. K. Terry 1917, page 318) "That when said Act goes into effect, the cost, charges of courts, fees and commissions now authorized by law to be collected and retained by the several officers of Jefferson County, above named (Judge of Probate, Tax Collector, Tax Assessor, Clerk of the Circuit Court, Clerk of the Criminal Court and the Register in Chancery) shall continue to be collected, but shall be paid into the County Treasury by the officer collecting the same, as other moneys belonging to the county are paid."

Act of 1915, approved September 10, 1915 (Local Laws of Jefferson County compiled by W. K. Terry 1917, page 339, Section 6), provides:

"That all moneys received, or fees, commissions or charges of the Sheriff shall be paid into the County Treasury as other moneys due the county and shall be kept in a separate fund designated as the Sheriff's fund, and that the county shall pay the compensation of the Sheriff and the Deputy Sheriffs, Guards and Jailers, and such compensation shall be paid from the Sheriff's fund; provided that at the end of each fiscal year any moneys in the Sheriff's fund not appropriated shall go into and be transferred to the general funds of the county."

Section 4090 of the Code of 1907, reads as follows:

"When execution against the defendant is returned 'no property found,' execution may issue against the plaintiff, in the name of the clerk of the court, for all the costs created by him in obtaining his judgment."

The word "may" as used in this section, as applicable to the costs due Jefferson County, in my opinion, requires the issue of execution in the name of the clerk, when execution has been returned "no property found" as against the defendant. In support of this construction see the following authorities giving a similar construction on the word "may."

Shackleford v. State, 204 Ala. 362;
Ex parte Banks, 28 Ala. 28;
Tarver v. The Commissioners' Court of Tallapoosa, 17 Ala. 527.

Therefore, at the time of the passage of the Act of 1923, above quoted from, Jefferson County was the owner of any and all costs for services rendered by officers in such cases to which said Act of 1923 would apply. In fact, Jefferson County is the only one adversely interested by an application of said Act. The officers are not interested to any extent financially, or otherwise, so far as I can see, except by a failure to issue execution, the officer charged with such duty would be relieved from performing such labor. The county is the owner of such funds, when collected. Such asset in the form of a judgment, or vested right to the costs and fees for services performed by said officers, for which judgment has not yet been rendered, but may be later, is also the property, strictly speaking, of Jefferson County.

For the collection of this money due Jefferson County, or to be due, it has or had two remedies, to-wit, the remedy provided by said Section 4090 of the Code of 1907, also the right to collect by suit on each such case against each plaintiff for the costs created by the plaintiff in obtaining his judgment.

Mayfield's Digest, Vol. 7, page 207.
11 Serg. & Rawle, 248 and 250.

"While the right of officers to fees depends solely upon the statute or law authorizing such fees, yet when the law has fixed certain fees for certain services of certain officers, and such services have been performed by

such officer and he becomes entitled to such fees, * * * and we will not presume that the subsequent Act of the Legislature was designed to take away these rights without words or necessary implication to that effect. It is therefore not necessary to be decided whether the Legislature could do so, had it attempted it, in the absence of any attempt."

Brandon, Auditor, v. Williams, Judge, 166 Ala. 72;
Fisk v. Jefferson Police Jury Louisiana, ex rel Fisk v. same, 116 N. S. 131;
Young v. City of Rochester, 76 N. Y. Supp. 224.

I am of the opinion that the amounts due are such that the Legislature would have no right to destroy, nor impair the obligation of, nor destroy or impair the remedy for the enforcement thereof by collection. Section 95 of Const. 1901. See Mayfield's Constitution, Citations thereunder.

It is held that the State could not, as the individual debtor, by any Act of its own, by any expression of the legislative will, by any agency it could employ, lessen, or change, or impair, or destroy the obligation of contracts into which it had entered.

Ex rel Plock & Co. v. Cobb, 66 Ala. 152

"Neither can the remedies for enforcing contracts or for the violation of their rights be taken away. Substantial changes are permissible as long as a substantial remedy remains."

Tiedeman's Lim. Pol. Pow. 508.

Viewing the provisions of the Act one way, this Act does not take away the rights to have an execution issued, but takes away the mandatory provision, and leaves it to the arbitrary will of the officer as to whether he will, or will not, issue an execution when requested to do so. In this it impairs the existing rights and remedies of Jefferson County to collect what is justly due said county. The statute of limitations as to suit by

the county against the plaintiff for the said costs would be three years.

Sec. 4838, Code of 1907.

The right to collect by execution issued under Section 4090, of the Code, under certain circumstances, would be ten years.

Code Section 4147.

Viewing the effect of this Act from another angle, to-wit, whether or not it is retrospective in effect, it is my opinion it is not, for the reason it does not affirmatively appear from the express or implied provisions thereof that the Legislature intended it should act retrospectively.

Duy v. Alabama Western Ry. Co., 175 Ala. 170 and cases there cited.
Michie's Digest Vol. 11, page 1120.
Mayfield's Digest, Vol. 4, page 859.

Therefore, as to the fees and costs earned by said officers going to the county the same law applies as existed at the time of the rendition of said services.

However, it is my opinion the intention of the Act in the following clause of said Act: "but the clerk shall not be required to issue execution against the plaintiff under such circumstances;" would go further than leaving it to the pleasure of the clerk as to the issue of the execution, and precludes the county from requiring the issue of the execution. If this construction is the true one to give to said Act, then the said Act, in my opinion, contravenes Section 95 of the constitution.

Again, as said judgments and liabilities for costs are owned by Jefferson County, if it could be said that said Act applies from the date of its approval to all such judgments, then, in my opinion, it is unconstitutional, and void, as being in contravention to Section 100 of the constitution, which prohibits the Legislature from releasing, remitting, postponing, or in any way diminishing any obligation or liability of any person, associa-

tion or corporation held or owned by the State, or any county, or municipality of the State.

For the reasons stated it is my opinion that this Act is not retroactive, not applicable to costs and fees due for services performed prior to the approval of said Act, and for that reason it is unnecessary to say it is an attempt by legislative will to destroy the obligation of contract or impair the remedy in violation of said constitutional provisions.

Hence, I am of the opinion, that as to costs and fees due for services performed prior to said Act the law in force at the time of the rendition of such services, is the law to apply in the collection of such fees and costs due Jefferson County.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

November 16, 1923.

Hon. John W. Abercrombie,
Superintendent,
Capitol:

Dear Sir:

Your letter of the 9th instant asks whether or not H. B. 566 and H. B. 940 are conflicting and if so, which is controlling.

House Bill 566, approved on September 28, 1293, makes an appropriation for the erection, repair and equipment of rural school buildings and provides "that on the first day of October, 1923, and annually thereafter, the total of any unexpended balance of the amount set aside as provided in Section 1, shall together with the annual appropriation provided for in this Act, be apportioned equally among all the counties of the State, and such apportionments shall be certified to the State Auditor."

House Bill 940, approved October 1, 1923, provides as follows:

> "Section 1. That the unexpended balances in all special and trust funds, except those provided for in the constitution and such appropriations as are made in whole or in part

from the general educational fund or from the annual legislative appropriation to the public schools and the pension fund, be made to revert to the general fund at the close of each fiscal year."

These Acts having been enacted at the same session of the Legislature and within a few days of each other, should be construed *in pari materia* if possible.

36 Cyc. 1086.

The term "schools" include the erection, repair and equipment of school buildings. Rural schools are public schools. The appropriation, therefore, for the erection, repair and equipment of rural school buildings is, in our opinion, an appropriation to the public schools within the meaning of the provision of Section 1 of H. B. 940, quoted above, excepting from the operation of the Act "appropriations * * * from the annual legislative appropriation to public schools."

The fund created by that appropriation is, therefore, not subject to the provisions of H. B. 940 making all special and trust funds revert to the general funds at the close of each fiscal year.

Yours very truly,
(MRS.) EDWINA FALKNER,
Assistant Attorney General.

November 16, 1923.

Hon. John A. Dickinson,
Prattville, Ala.

Dear Sir:

Replying to your letter of the 8th inst. to the Attorney General, I beg to advise you as follows:

Act No. 477, Senate Bill 427, of the Legislature of 1923, approved September 28, 1923, provides by Section 1 thereof as follows:

"That it shall be unlawful for any members of any Commissioners' Court or Board of Revenue to award any contract in which the county of such commissioner or member of Board of Revenue is interested to any person related, either by blood or marriage within the fourth degree to such commissioner or member of Board of Revenue, or to employ any such relative to do any work for said county, or to act as agent for any such member in any work in which such county is interested."

The intent of this Act, in my opinion, is to preclude any member of the Board of Revenue or Court of County Commissioners from making any contract in which his county is interested, with any person related to him, either by blood or marriage within the fourth degree, and that, when the making of such a contract comes up before the Board of Revenue or Court of County Commissioners then it is the duty of such member or commissioner related within said degree to the person to be contracted with, to excuse himself from the proceedings of the court, and let the remaining members, not related, as a court, proceed to consider, or make such contract. Further, it would be a due precaution to let the minutes of the court show that said commissioners were related, and that he excused himself from proceedings of said body and took no part in the consideration of, or making of such contract.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

November 27, 1923.

Hon. L. B. Riddle,
Judge of Probate,
Columbiana, Ala.

Dear Sir:

Your letter of November 15th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You wish to know:

1st. What charge shall be made for operating an automobile hearse in Calera;

2nd. If an automobile hearse can be operated on the streets and public roads under a license for selling coffins;

3rd. What kind of a tag should be used on an automobile hearse.

In reply to your first inquiry will say that Section 15 of House Bill No. 321, provides that license for operating a hearse in places of less than ten thousand inhabitants shall be ten dollars. This amount is divided between the State and the city under Section 23 of the same Act, 80 per cent to the State and 20 per cent to city where the person owning the automobile lives in the city, but where the owner lives out of a city, then 20 per cent to the county. There is no separate license for the county.

In reply to your second inquiry will say that the Legislature has provided for a license for selling coffins and another and different license for operating a hearse. This was purely a question for the Legislature to determine; administrative officers and courts have no discretion in the matter. They must follow the law as passed by the Legislature and approved by the Governor.

In answer to your third inquiry will say that said Section 15 provides that a hearse shall have a commercial tag. The State Tax Commission, in classifying commercial tags, has provided and directed that a hearse shall have an "E Truck Tag."

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

November 30, 1923.

Hon. Chas. E. McCall,
Chairman State Pension Commission,
Capitol.

Dear Sir:

The Attorney General has referred to me for reply your inquiry of recent date asking whether or not under the provisions of the pension law where an application is made to be

placed on the pension rolls of the State and the same is granted, the pensioner is entitled to draw a pension for the quarter preceding or prior to the granting of the application or for the quarter during which the application is received and granted.

Under the General Pension Acts of 1919 and 1920, it is my opinion that the law contemplates that the pensioner should be placed on the roll before the first day of each quarter or, failing therein, that a warrant could not be issued for said quarter. The application should be in the hands of the State Pension Commission before the last day of the preceding quarter in order for the pensioner to be placed upon the rolls for the quarter beginning on the first of each January, April, July and October.

Section 32 of the Act of 1919 provides that "no back pay shall in any case be granted except to those making application as set forth in this Act." Section 24 of said Act allows back pay to a pensioner who has been dropped from or left off the list of pensioners through any error or omission or inadvertance. Other than this I do not find any provision allowing back pay.

Yours truly,
O. B. CORNELIUS,
Assistant Attorney General.

December 3, 1923.

Hon. E. O. Creel,
Superintendent of Education,
Guntersville, Ala.

Dear Sir:

Yours of recent date made the following inquiry:

> "According to the Acts of 1919 we cannot vote a district tax for school purposes for less than two years. Last summer we overlooked that matter and voted in two districts for one year. I have noticed an account of the recent Legislature validating district elections. Does this validate our elections?"

The Act passed at the last session of the Legislature to which you refer does not purport to ratify any elections except those held under the provisions of the Act approved February 15, 1919, Acts 1919, page 58, and then only when the election was "irregular by reason of failure to give notice thereof in any newspaper or by reason of any other irregularity prior to the actual holding of the election."

The General School Code (Acts 1919, page 567) Article 12, provides for elections for three-mill county and district school tax and Section 6, page 611 thereof, provides that "any special tax levied under the provisions of this Article shall not be for a shorter term than two (2) years."

An election by ballots proposing a levy for one year is not merely irregular; the time such levy is to be continued is a very material element, and certainly not "preliminary" irregularity.

We are of the opinion, therefore, that your election was not ratified by the Act above referred to.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

December 10, 1923.

State Tax Commission,
Capitol.

Dear Sirs:

In answer to the questions propounded by the Birmingham Motor Trade Association attached to letter written you by Mr. G. P. Caldwell, its secretary, will say as follows:

1st. A dealer is not required to take out a certificate of title for new motor vehicles purchased by him from a manufacturer. A distributor, as we understand, is simply an agent of the manufacturer and a purchase through him is simply a purchase from the manufacturer.

An individual who purchases a motor vehicle for use need not take out certificate of title until he wishes to get a license to operate such motor vehicle.

2nd. Where the distributor is an agent of the manufacturer, he need not get a certificate of title to a new automobile of the manufacturer in order to sell such automobile to a dealer. In such a case it is the manufacturer selling to the dealer through his agent. The law does not apply to a manufacturer selling his new product whether through his agent or otherwise to a dealer.

3rd. Before any person, firm or corporation can sell a second-hand car in this State, he or it must first obtain a certificate of title before selling. It is immaterial to whom the sale is made.

The dealer, in purchasing a second-hand car and keeping it in his possession, must obtain a transfer of the certificate of title from his vendor. He can keep possession under this transferred certificate of title for ten days. Within ten days after purchase he must obtain a certificate of title by surrendering the transferred certificate and paying the required amount.

4th. A dealer has no right to purchase a second-hand motor vehicle from anyone without a transfer of the certificate of title to him by such seller. To do so both the seller and purchaser are guilty of a misdemeanor. It is immaterial that such seller has not used the motor vehicle. No license or tag is required as a condition precedent to selling: but a certificate of title is required as a condition precedent.

5th. In my opinion, owing to the fact that House Bill No. 582 was not approved until September 14th, 1923, that its provisions are entirely new to this State and not very clearly expressed and that automobile licenses were not delinquent until November 15th, 1923, for administrative purposes, by administrative officers, the law in regard to the buying and selling of automobiles prior to November 15th, 1923, should be construed as liberally as possible, in order that such a purchaser might get his certificate of title, so that he might sell such a car or get license to operate such car; but the full amount of revenue that the State would have gotten, had the letter of the law been complied with, should be demanded as a condition precedent to issuing to such purchaser a certificate of title. In such a case, we would suggest that the purchaser be required to make affidavit as to the name of the seller, the date of purchase, substan-

tially, showing that it was between September 30th and November 15th, 1923, that he bought the automobile, that he is unable to get the seller to take out a certificate of title for reasons stated in the affidavit, and that the automobile is the property of affiant. Upon paying for the certificate of title, for such seller, the Judge of Probate should issue a certificate of title in the name of such seller, attach the affidavit thereto and send the certificate of title with the affidavit attached to the State Tax Commission. The Judge of Probate could, thereupon on payment therefor, issue a certificate of title to such purchaser. But this privilege should be limited to applications made within sixty days after November 14th, 1923.

6th. While a license cannot be taken out without first obtaining a certificate of title, a certificate of title may be taken out, at any time, without the taking out of a license. The *sine qua non* for selling a second-hand automobile is the taking out of a certificate of title by the seller. The license is a personal privilege to the licensee to operate the motor vehicle which does not affect the sale of the automobile, and there is no prohibition, that I recall, of the sale of an automobile because the license for operating it has not been paid by the owner. The owner still owes the license after he has sold the automobile if he operated the automobile in this State, under such circumstances as required a license after September 30th. That where the purchase was prior to October 1, 1923, the dealer must take out certificate of title himself in order to keep such automobile in stock; if purchased after October 1st, 1923, the dealer may keep car ten days under transferred certificate, within the ten days he should take out certificate of title in himself.

7th. If a dealer has had a second-hand automobile in stock since October 1st and has not operated it otherwise than for demonstration for sale, it is not necessary for him to take out a license for use of such automobile before selling to a purchaser.

8th. A purchaser of a second-hand automobile must take out a license before he has the right to operate such automobile at all. A purchaser of a new automobile has three days after purchase in which to take out a license.

9th. Answered above.

10th. A dealer is not required to take out a license on any automobile which he does not operate otherwise than for demonstration for sale. While demonstrating for sale he must use a dealer's tag.

11th. In case a dealer makes a conditional sale of an automobile and the condition of purchase is broken so that the automobile is returned to him and again becomes his automobile unconditionally, but the conditional purchaser refuses to transfer to him his certificate of title, such dealer should by affidavit make satisfactory proof to the Judge of Probate of such facts and the Judge of Probate should then issue him a certificate of title on payment of the legal fee therefor.

12th. A certificate of title must be transferred on the blank furnished by the State Tax Commission, and all liens, mortgages and reservations of title to secure purchase money must be stated in the place and manner prescribed by the State Tax Commission. A reservation of title for security must not be construed as a reservation of any right with reference to the certificate of title transferred to the conditional buyer.

If the automobile is turned back to the dealer, so as to become the unconditioned property of the dealer, the dealer must take out a new certificate of title.

13th. Whoever owned a car on October 1st, 1922, is primarily chargeable with the *ad valorem* taxes due on such car for the present current tax collecting year; but if he fails to pay such tax before a purchaser applies for a license to operate such car, the *ad valorem* tax must be paid by either the dealer who sold it, or the purchaser or someone, before a license can be issued to operate such car. In such a case the dealer sells a car with a lien thereon for the payment of the *ad valorem* taxes.

All assessments on motor vehicles accruing after September 30th, 1923, are to be made against the first person, firm or corporation who applies for a license to operate such motor vehicle, if such motor vehicle is then assessable. In other words, all assessments of motor vehicles, relating to assessment years prior to October 1st, 1923, are governed by the laws passed prior to the recent session of the Legislature, while assessments accruing after

September 30th, 1923, are governed by House Bill No. 321, passed at the recent session of the Legislature.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

December 13, 1923.

Hon. W. H. Lee,
Judge of Probate,
Hayneville, Ala.

Dear Sir:

Your letter of December 4th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "We have a ruling from authority at Washington, with reference to stamp tax on deeds, in which ruling it is held that only the extent of the interest of the grantor in a deed, is subject to taxation. If a man has title to a place worth $5,000.00 and it is mortgaged for $3,000.00, the owner only places $2 in stamps on the deed, when he conveys the property. It has occurred to me that this is a very correct, just and reasonable rule, which Alabama will no doubt adopt with reference to the deed tax. Kindly advise me your opinion on the point. I have a deed in office now, in which the grantor's equity is probably $500.00, while the property itself is worth several thousand dollars. I would like to know whether I must collect tax on the value of the property or the value of the grantor's interest."

In arriving at the conclusion which you express in your letter we apprehend that you have not carefully read the two statutes—the Federal and the State. On reading the two statutes you will readily observe that they differ from each other on the very question that you raise. The Federal statute says:

> "When the consideration of value of the interest or property conveyed, *exclusive of the value of any lien or*

encumbrance remaining thereon at the time of sale, exceeds $100.00 and does not exceed $500.00, 50 cents; and for each additional $500.00 or fractional part thereof 50 cents; provided, *that nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt."*

We doubt not that the recent Legislature had in mind the Federal statute when it passed House Bill No. 845, and purposely left out the words of the Federal statute: *"exclusive of the value of any lien or encumbrance remaining thereon at the time of sale."*

Our State statute on the subject reads as follows:

"No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys any interest in any such property, shall be received for record unless the following privilege tax shall have been paid upon such instrument before the same is offered for record, to-wit, upon all such instruments which are executed to convey real or personal property situated in this State of the value of five hundred dollars or less there shall be paid the sum of fifty cents, and upon all such instruments executed to convey real or personal property in this State of more than five hundred dollars in value there shall be paid the sum of fifty cents for each five hundred dollars or fraction thereof in value of the property conveyed by such instrument * * * Provided, however, that this Act shall not be so construed or enforced as to require the payment of privilege tax herein provided on mortgages; deeds of trust or other instruments in the nature of a mortgage or deeds or other instruments with vendor's lien except as to that part of the purchase price which is paid in cash or other article of value and which pay no other privilege tax for recording."

It will be seen, as already stated, that the State statute leaves out the very words upon which the construction you men-

tion is based, viz., *"exclusive of the value of any lien or encumbrance remaining threon at the time of sale."*

Our State statute follows the Federal statute in excluding from the operation of its provisions:

1st. Mortgages;

2nd. Deeds of trust or instruments of like character;

3rd. Deeds or instruments with vendor's lien except as to that part of the purchase price which is paid in cash or other articles of value and which pay no other privilege tax for recording.

It is thus seen that mortgages and deeds of trust are entirely excluded from the operation of the State statute, and deeds retaining a vendor's lien are excluded so far as the deferred payments are concerned, as to which a mortgage filing tax is required by Section 4 1-2 of House Bill No. 294, passed at the recent session of the Legislature.

In my opinion, when A conveys to B, by deed, a piece of real estate in consideration that B assume payment of a mortgage debt on such real estate made to C, this is not the conveyance of a mere interest within the meaning of House Bill No. 845, but is a conveyance of the whole property, as between A and B, the consideration of the conveyance being the assumption by B of the payment to C of the mortgage debt. As between A and B, it is the conveyance of the whole property, the consideration passing from B to A being the assumption by B of payment of a debt due by A.

House Bill No. 845 presents many questions somewhat difficult to construe. While the justice or injustice of a tax is primarily a question for the Legislature, and courts cannot consider the question of injustice except for the purpose of declaring a provision of an Act void, still we are unable to see why it is just to charge the deed filing tax to a purchaser for money in cash and unjust to charge such tax to a purchaser who merely assumes the payment of a debt due by the seller as consideration for the conveyance. It will be noticed that in such a case there is no vendor's lien to be considered.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

December 19, 1923.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

You ask "if a prisoner is arrested and carried to the County Jail and makes bond and is released without having been fed can a charge legally be made against the State for feeding him?"

The law provides "when the number of prisoners does not exceed ten, for each prisoner, sixty cents per day, or such part thereof as may be necessary, is allowed" * * * etc. Acts 1920, page 28.

The law does not attempt to provide a scale by meals or fractions of a day. It provides that the Sheriff shall receive a certain amount per day for each prisoner confined. It provides that the Sheriff shall furnish an itemized statement giving *date* committed and *date* discharged. It does not provide that the time of day committed and discharged shall be shown, nor whether he shall be entitled to compensation for prisoners discharged before breakfast, or before dinner or before supper.

We are, therefore, of the opinion that under the law the Sheriff is entitled to compensation, according to the scale provided, for every prisoner confined in jail during the day, and that the length of his confinement during the day is immaterial, but we are of the opinion that the prisoner must be *confined* in good faith for some part of the day, and that a mere arrest and release on bond is not a confinement in jail.

Yours very truly,
(MRS.) EDWINA FALKNER,
Assistant Attorney General.

December 21, 1923.

Hon. J. M. Moore, Commissioner,
Department of Agriculture and Industries,
Capitol.

Dear Sir:

In reply to your inquiry as to what appropriation has been made for the postage and telegraph expenses of your department, I beg to advise as follows:

Section 2 of Article 43 of the Agriculture Code, (Acts 1923, page 549) provides, so far as pertinent to the question under consideration as follows:

> "For the operation and maintenance of the Department of Agriculture and Industries, * * * and for carrying into effect all the provisions of this Act which relate in any manner to the duties of the Commissioner of Agriculture and Industries or to the duties of the commissioner as executive officer of the State Board of Agriculture, there is hereby appropriated per annum out of any monies in the State Treasury, the sum of $142,450."

In allotting definite portions of this lump sum appropriation to each of the several activities governed by the provisions of this Act known as the Agricultural Code, this same section further provides, "that for the general operation and expenses of the Department of Agriculture and Industries and the State Board of Agriculture the following amounts of said sum are hereby appropriated per annum: * * * For contingent fund $3,000.00 * * * For general administration expenses of the State Board of Agriculture $5,000.00 * * * For printing, including bulletins and other periodicals $5,000.00."

The appropriation of $142,450.00 made by this Act is by the express provisions of the Act "for the operation and maintenance" of the various activities of the Act, and is to cover "the general operation and expenses of the Department of Agriculture and Industries, and the State Board of Agriculture." It was without doubt the legislative intent that this sum of $142,450, should be the sum total of all the expenses incurred for every purpose relating to the activities authorized or regulated by the Act.

This interpretation is also in accord with the legislative history of the law.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

December 27, 1923.

Hon. Thomas J. Conner, President,
Board of County Commissioners,
Andalusia, Ala.

Dear Sir:

You request to be advised whether or not the same person may serve as clerk of the Court of County Commissioners of Covington County and as treasurer of the county also.

In the case of Compton v. Marengo County Bank, 82 Sou. 159, it was held that the General Acts of 1915, pages 348-350, providing for the abolishment of the office of County Treasurer and for the deposit of county funds in banks or with a person employed to act as County Treasurer was intended to create a mere contractual agency to perform the functions of the former County Treasurer. The employment of a person under Section 5 of this Act of 1915 to act as County Treasurer of Covington County would not make such person an officer within the meaning of that word as used in Section 280 of the constitution of 1901 prohibiting a person from holding two offices at the same time.

Section 9 of the Act establishing the Court of County Commissioners for Covington County (Local Acts 1919 page 10), provides for the appointment of a clerk of the Court of County Commissioners for that court. This clerk is not given any definite term of office, but is removable, unless otherwise provided, at the will of the appointing power. This Act also provides that such clerk shall perform, in addition to the duties prescribed by the Act, such duties as required of him by the court. In my opinion, the clerk of the Court of County Commissioners for Covington County, although he is required to give a bond for the faithful performance of his duties, is not an officer within the meaning of that word as used in Section 280 of the constitution of 1901.

It follows that both the position of clerk of the Court of County Commissioners for Covington County, and of treasurer for that county are employments and may be held by the same person at the same time. There appears to be nothing incompat-

ible in the duties of the two positions which would make it against public policy for one person to hold both places at the same time.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

OPINIONS
1924

January 3, 1924.

Hon. W. B. Allgood, Auditor,
State Capitol,
Dear Sir:

In your letter of the 4th instant you request to be advised whether registrars can be compensated for time spent in purging the registration list, when the meeting for purging such list was held at other times than prescribed by law. It is stated that the meeting was not held at the time prescribed by statute because it was impossible to secure a quorum of the Board of Registrars at that time.

Sections 23, 24 and 25 of the Act approved October 2, 1920, particularly prescribe a fixed time of meeting for the purging of the registration list. Acts 1920, pages 129-130.

In the case of State ex rel Newton v. Herring, there was no registrar in St. Clair County during the period in which the law provided persons should be registered. It was insisted that persons thus being deprived of registering at such time should be permitted to register after such date. The court held in such case that only during the time prescribed by the statute could persons be legally registered and the registrar had no authority to register persons at any other time. 196 Ala. 455; 71 So. 679.

State ex rel Shoemaker v. Dawson, 196 Ala. 453; 71 So. 678.

The registration statute prescribes a definite period in which the registration list shall be purged. Both registering persons and purging the registration list are judicial acts of the Board of Registrars. To be legal the registration and the purging of the registration list must be performed at the time prescribed by law and at no other time. The meeting to purge such list held by the registrars at another time than that prescribed by law being illegal, the registrars can secure no pay for such services.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 3, 1924.

Hon. J. T. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Sir:

This will acknowledge receipt of your letter of the 2nd inst. requesting to be advised whether or not ex-service men who paid poll tax during the time they were exempt could be credited with such payments on the poll tax due October 1, 1923, and subsequent years.

In the case of Shelton, Tax Collector, v. Blount County, 202 Ala. 620; 81 So. 561, our Supreme Court stated "that a tax debtor can never be allowed to set off against his taxes a claim against the State or municipality and it has been expressly held that a tax due for one year cannot be satisfied by an overpayment of taxes made the previous year."

I regret very much to advise that I do not think the payment made during the time they were exempt could be credited to the poll tax due October 1, 1923, and for the poll tax due for years subsequent to 1925.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 5, 1924.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

You request to be advised whether the State Prison Inspector has authority to direct the discontinuance of the use in jails of certain articles, regarded by him as unnecessary, which are being used in the cleaning of jails.

Section 5 of the Act creating the office of State Prison Inspector (Acts 1911, page 356) provides so far as pertinent to this inquiry: "That it shall be the duty of the State Prison Inspector * * * to aid in securing the * * economic management of such jail; * * * to require that the buildings and grounds be kept

in the best sanitary condition; to make a detailed report to the Governor after each visit of * * * the cost of management * * and whether the money appropriated for such purpose is properly expended therefor." Section 8 of the Act gives authority to condemn jails which are insanitary. Section 12 gives the Inspector authority to formulate rules and regulations necessary to sanitation of jails.

From these provisions and other provisions of the Act it is clear that the power and authority of the Inspector is to compel compliance with regulations for the purpose of maintaining proper sanitary conditions for prisoners. The authority in reference to the economic management of the jail is advisory only and this authority is still left vested in certain county officers. The fact that the use of an article was unnecessary would not authorize the Inspector to prevent its use. The Inspector could only prevent the use of an article that makes the prison less sanitary.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 5, 1924.

Hon. J. Foy Guin,
County Treasurer,
Russellville, Ala.

Dear Sir:

Replying to your letter of the Attorney General of recent date inquiring if the treasurer or depository of the county funds, or the court of county revenue of your county is the proper one to have published the receipts and disbursements of county funds as provided by General Acts of 1919, page 451, I beg to advise it is my opinion as follows:

General Acts of 1915, page 348, provides: "Said bank (county depository) shall furnish said board with a full and detailed statement of the receipts and disbursements on the second Monday of January and July in each and every year."

Also, "All acts required by law to be performed by the county treasurer, outside of the receipts and disbursements of the county funds, shall be performed by the president of the Board of Revenue or Court of County Commissioners of the county."

Wherefore, it appears it was the intent of the Legislature in said Acts that the depository should furnish the said information to said board of said county, and whose duty it is, under provisions of Acts of 1919, page 451, to make semi-annual publication. The president of the Board of Revenue or Court of County Commissioners was the proper one, under Acts of 1915, but the Acts of 1919 above cited places the duty to make and publish the same upon your Court of County Revenue.

As to whether or not the Court of County Revenue has the authority to employ another to perform the labor and duty required of it, I will say, if it should do so, the expense thereof would be borne by the members, and not out of the county funds.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

Copy to Chief Examiner of Accounts, Capitol.

January 7, 1924.

Honorable S. W. Fleming, Chairman,
Madison County Board of Commissioners,
Huntsville, Ala.

Dear Sir:

Replying to your recent letter to the Attorney General for an opinion as to whether or not the members of the Board of Commissioners of your county can receive any compensation for inspecting or supervising the public roads and bridges in their county.

Section 7 of the Act creating the "Board of County Commissioners of Madison County Local Acts 1923, page 3, as amended (page 216) contains the provisions that the "other four members of the Board of County Commissioners shall receive eight ($8.00) dollars per diem for each day such member is in attendance upon the meetings of the board, such compensation being payable from the county treasury, provided that no such member of the board, except the chairman thereof, shall receive compensation for his services in excess of four hundred ($400.00) dollars per annum."

The above section relates solely, in my opinion, to their compensation while acting as members of the Board of County Com-

missioners. By section 18 thereof, the chairman of the board is required to make a personal inspection of any and all roads under construction or repair in your county, necessary to keep him personally informed as to the character of work and condition of the road.

This is one of the duties pertaining to his office for which he receives a salary of $2,500 per annum.

No duties relating to the public roads, outside of the duties of the members of the board as a court (while in session) is placed upon the other members of the board.

Wherefore, my opinion is, if the court should employ a member of said board for any work relating to the public roads and bridges, the same not being part of which the president is required to perform under section 18, the authority to do so, is conferred by General Acts of 1909, page 157.

While occupied in the discharge of their duties in letting out, inspecting and accepting, building or repairing of any county bridges, or county buildings or works, they would be entitled to be paid therefor in accordance with the provisions of General Acts of 1909, page 157, after having complied with the latter clause, providing that said member must be acting under authority of an order of the commissioner's court previously made.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

January 10, 1924.

Hon. G. P. Butler,
Probate Judge,
Opelika, Ala.

My Dear Sir:

You request to be advised whether the County Court of Commissioners has power to issue interest-bearing warrants in payment of 60 acres of land which the said court deems necessary to purchase to make proper provision for the poor.

In all matters relative to which the Court of County Commissioners are given authority to contract in behalf of the county, said court has power to bind the county to pay interest on the warrant evidencing the consideration of the contract as a part of such consideration.

Stone, County Treasurer, v. State ex rel Jett-Muths Const. Co. 204 Ala. 13; 85 South. 443.
Marengo County v. Barley, 96 South. 753.

The Court of County Commissioners are authorized to purchase lands for the use of a poor house (Section 1598, Code 1907), and therefore can engage to pay for the same with interest-bearing warrants.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 10, 1924.

Hon. I. T. Quinn, Commissioner,
Department of Game and Fisheries,
Montgomery, Ala.

My Dear Sir:

House Joint Resolution No. 41 providing for recess legislative committee "To investigate and examine into and report back to the Legislature the *conservation laws of the State of Alabama* relating to the natural resources of the State" (Acts 1923, page 75), contains no authority to incur any expense for travel to inspect such natural resources. Furthermore, the wording of the resolution limits the authority of the committee to a consideration of conservation laws.

The act approved September 26, 1923, entitled "To provide for the payment of mileage and per diem to members of certain recess committees of the Legislature of 1923" (Acts 1923, page 577), only provides for the payment of traveling expenses of committees authorized to incur expenses in traveling in the discharge of their duties but which expense had not been paid because the travel was beyond the time authorized.

As the resolution creating the committee to investigate the conservation evidently never contemplated extra travel in the discharge of its duties, I am of the opinion that the act does not authorize the payment of the traveling expenses of the members of that committee making any inspection of natural resources.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 10, 1924.

Hon. Wm. H. Thomas,
Chairman, Executive Committee,
Alabama Reform School at Mt. Meigs,
Capitol.

Dear Sir:

Yours of recent date enclosing request for opinion from Mr. J. R. Wingfield, superintendent of the Alabama Reform School at Mt. Meigs, has been received. I took the liberty of writing Mr. Wingfield for a more detailed statement of the facts. He has sent me the order of the court committing the two negro boys to his institution.

The question presented by Mr. Wingfield is in effect whether or not the Alabama Reform School for Juvenile Negro Law-breakers must receive children who are physically absolutely helpless, must be nursed as an infant, and "cannot be helped educationally."

The law establishing and regulating the Reform School at Mt. Meigs provides:

> "Section 3. The school is established for the proper education and training of juvenile negro law-breakers as may be lawfully committed to it. The course of instruction in the school shall include a common school education with a thorough training in agriculture and industries and giving special attention to moral training so as to make him a self-respecting, industrious, good citizen. Provided, that no criminal over the age of fifteen (15) years shall be admitted to said institution."
>
> "Section 6. The authorities of the school shall receive every negro boy who may be committed to it by an order or judgment of any court of record of the State of Alabama and support, govern and teach the boy until he shall be of the age of eighteen (18) years or legally discharged from the school."

The Juvenile Court Law of Montgomery County, from which the children in question were committed, provides as follows:

"If the said child is found by the court to be dependent, neglected or delinquent, the court shall so adjudicate * * * and the court may commit such child to any other State institution which is now, or may be hereafter, established to receive and care for children coming under the provisions of this Act."

There is no doubt that the purpose of the school is for reformation of juvenile negro law-breakers and not for the purpose of providing a place of refuge for dependent and neglected children. But the question of whether or not a child is "dependent and neglected" or "delinquent" and a "law-breaker" is left entirely with the discretion of the court. No matter what the facts are, if the court adjudges the child "delinquent," his judgment precludes any investigation into the facts unless an appeal is taken by the child's guardian.

The Juvenile Court of Montgomery County is a court of record, and the law expressly provides (Section 6 above quoted) that the authorities shall receive every negro boy committed by any court of record of this State.

The commitments of the court, herein returned to you, signed by the judge of the Juvenile Court, state that the children were adjudged to be delinquent. Hence, in our opinion, the superintendent of the Reform School at Mt. Meigs should receive these boys.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

January 10, 1924.

Hon. G. C. Walker,
Deputy Solicitor,
Clanton, Ala.

Dear Sir:

Replying to the inquiry contained in your letter of the 7th inst., I beg to advise that, in my opinion, the local act approved August 9, 1923, which had for its purpose the abolishment of the county court of Chilton County, Alabama (Local Acts, 1923, page 64) did not repeal the General Act approved September 25, 1915,

which authorized the appointment and elections of deputy solicitors and prescribed their duties and fixed their compensation. (Acts 1915, page 817.)

Under section 4 of this latter Act, the solicitor still has the power and duty to appoint a deputy solicitor for Chilton County and such deputy solicitor is entitled to receive compensation as such officer.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 11, 1924.

Hon. D. B. Borden,
Judge of Probate,
Greensboro, Ala.

Dear Sir:

The act imposing an excise tax on the business of selling and distributing gasoline provided in the latter part of section 8 thereof, for the use of that part of the gasoline fund received by the counties as follows:

> "And such fund so placed to the credit of the road and bridge fund in each county, shall be used for the construction and maintenance of the public highways and bridges in such counties, and for no other purpose."
>
> General Acts, Alabama, 1923, page 37.

This provision followed a requirement contained in the same section that the gasoline fund received by the county be placed to the credit of the road and bridge fund of the county, which was sufficient to limit the use of such fund solely to road purposes. It is therefore evident that the lawmakers intended for the provision heretofore quoted requiring such fund to be used exclusively for the construction and maintenance of public highways and bridges of the county to restrict the use of the funds to more limited purposes than would result from merely making the gasoline fund a part of the road and bridge fund liable to be applied to the

payment of all obligations then outstanding against the road and bridge fund. Unless this was true, this clause would have no meaning.

> Ex parte Dunlap, 71 Ala. 73.
> Armstrong v. Sellers, 182 Ala. 582.
> 62 South. 28.

These considerations lead to the conclusion that the Legislature intended the fund derived by the counties from this tax to be used for road purposes but that it should not be used for the payment of claims created against the road and bridge fund prior to the approval of the act, which was approved February 10, 1923. In other words, the purpose of the provision was to make available funds for future road work to counties whose financial condition prevented the use of any funds for such purpose.

On August 22, 1923, there was approved an act further providing for the general revenue of the State which contained the following provision regulating the use by counties of the funds received from the gasoline tax, to-wit:

> "Provided that all the funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said counties."—General Acts Alabama, 1923, page 197.

It will be noted that the authority contained in the act approved February 10, 1923, to devote such funds to "construct" highways and bridges, is not contained in the Act approved August 22, 1923. This latter act limits the use of such funds to purposes of "maintenance and repair" of highways and bridges. The omission of the power to use such funds to "construct" highways and bridges was not an oversight on the part of the law-makers, but in my opinion, was done purposely to limit the use of such funds to "maintenance and repair" of public roads and highways. It follows that while this fund, under the act approved February 10, 1923, could be used to "construct" highways and bridges, after the approval of the revenue Act approved August 22, 1923, the fund was limited to being used for the purpose of "repairing and maintaining" public highways and bridges.

It has been held that the authority to "maintain" a highway does not permit establishing a grade of an avenue.

Brenn v. City of Troy (N. Y.); 60 Barb. 417; 421.

To "construct" a road is one thing and to "maintain" the road after it is constructed is another.

Moorehead v. Little M. R. Co., 17 Ohio, 340.
City of Covington v. Bullock, 103 S. W. 275; 126 Ky. 236.

In common understanding and language of our people when we speak of construction we mean the building of something new, and not the repairing or maintenance of something already in existence.

In Re: Howell, 10 Pa. 379.

"Maintain" means to hold or keep in any particular condition, to keep up, to sustain, to prevent decaying or deteriorating.

Lucas v. St. L. & S. Ry. Co., 73 S. W. 589; 174 Mo. 270.

"Construct" means to bring into existence. "Maintain" means to support or preserve what has been brought into existence. "Repair" means to restore to a good state after injury, depletion, deterioration or partial destruction. L. N. A. & C. Ry. Co. v. Godman, 4 N. E. 163; 104 Ind. 490. Verdin v. City of St. Louis, 633 S. W. 480; 131 Mo. 26.

Maintenance and repair when applied to a highway mean almost the same thing.

Barber Asphalt Pav. Co. v. Hezel, 560 S. W. 449; 155 No. 391, 48 L. R. A. 285.

These judicial definitions of the words "construct," "maintain" and "repair" make plain the meaning of the provision limiting the use of this fund to the maintenance and repair of high-

ways and bridges. The fund is to be used to restore to good condition and to preserve in good condition existing highways and bridges.

In those many cases which lie in the twilight zone between "construction" of a road and "repairing and maintaining" a road, the authority charged with the expenditure of the funds will have to determine from all the facts whether the expense of such case is a proper charge against the fund.

The gasoline fund, so far as relates to determining its expenditure for purposes for which it can be legally used, and the method of procedure necessary to authorize the issue of warrants to be paid out of such fund, is handled in the same manner as the road and bridge fund.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 14, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Replying to your letter requesting the Attorney General for an opinion as to whether or not section 4090 of the Code of 1907 applies to the issuing of executions on judgments in the municipal court of Birmingham, I beg to advise you that it is my opinion it does not apply.

The Act creating said court (Local Acts of 1915, page 231), does not contain any provision that said section is applicable to this court, which, according to the Act, is created in lieu of all justices of the peace in certain precincts in Jefferson County.

This court is governed as to executions by the law applicable to justices of the peace.

It is held in the decision of the Supreme Court in the case of Albritton v. Williams, 132 Ala. 647, that Section 2673 of the Code (now section 4652) which provides that "as to parties, trial, competency of witnesses, admissibility of evidence, regulation of suits, and the time which suits may be brought, unless

otherwise provided, suits before justices of the peace shall be governed by the same rules and provisions, so far as they are applicable as suits in the circuit court. But manifestly, this section does not apply to the issuance, return and levy of executions from justice's courts.

The rules of the Circuit Court, as to the parties, trial, competency of witnesses, admissibility of evidence, regulation of suits, and the time in which they may be brought therein, have no application to the issuance of executions from justice's courts. Issuance of execution from these courts does not fall within either of the specified categories.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

January 15, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Section 4 of Article 5 of the School Code of 1919 is as follows:

> "The members of the County Board of Education shall receive from the public school funds of the county five ($5) dollars a day and their actual traveling and hotel expenses incurred in attending meetings of the board, and transacting the business of the board. The members of the county board shall not be allowed pay for more than twelve (12) days in any one year, and their expenses shall be paid in like manner as provided for the compensation of teachers. They shall not be required to hold teacher's certificates."

The first inquiry contained in your letter of the 6th instant is whether or not the County Board of Education has authority to specify a sum certain as the amount due a member as traveling and hotel expenses in lieu of expenditures really made for such purposes.

"Actual" means existent and not anticipated. As used in the present statute the word "actual" means real, as distinguished from estimated.

Osborne v. San Diego Land & Town Co., 178 U. S. 22.
Mombert v. Bannock County, 75 Pac. 239.

The Legislature by the term "actual traveling and hotel expenses" limited the amount which members of the County Board of Education could receive to reimburse them for traveling and hotel expenses to the definite amount which such member necessarily expended for these purposes.

It will also be noted that the statute permits the payment only of "expenses incurred." This necessarily refers to a past transaction and requires as a prerequisite to any payment for traveling and hotel expenses, the incurring of the expense and the existence of facts from which can be definitely ascertained the real outlay necessarily made. It is a familiar rule of construction that statutes regulating the expenditure of public funds will be strictly construed against authority to expend such funds. It follows that the County Board of Education has no authority to fix a sum certain as the amount which can be allowed to members of the Board of Education in the future for their traveling and hotel expenses. The amount which can be allowed for such purposes can only be ascertained after the incurring of the expense and the submission by the member seeking to be reimbursed of such evidence as necessary to show to the satisfaction of the proper authority the exact amount of the expenditure which has been necessarily made.

There is no provision requiring members of a County Board of Education to file an itemized statement of their actual traveling and hotel expenses supported by vouchers as a prerequisite to the allowance of such expenses. It is never amiss when public funds are disbursed to keep an itemized record of the expenditure. However, where the law authorizes certain persons to pass upon the correctness of a claim for expenses and does not require as a prerequisite to the allowance of such claim an itemized statement, supported by vouchers, the claim or account can be allowed without filing an itemized statement, even though such statement might be advisable. I find no authority vested in the State Board

of Education to promulgate a rule requiring as a prerequisite to the allowance of the expense account of a member of the County Board of Education, the itemizing of such account and the support of the same by vouchers.

Section 16 of Article 4 of the School Code of 1919 (Acts 1919, page 579) gives the State Board of Education authority to promulgate a series of forms and blanks which the county officials are required to use in reporting financial matters relating to the schools.

It is possible that such detailed reports could be required upon these blanks as will necessitate the itemizing of such expense accounts thereon.

In reply to the other questions contained in your letter, I beg to advise that in my opinion, members of the County Board of Education may be allowed compensation for the use of their own vehicles in attending meetings of the County Board of Education. There seems to be no authority, however, for the State Board to regulate the amount that shall be allowed for the use by members of the County Board of their conveyances.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 16, 1924.

Hon. Omer Carmichael, Secretary,
City School Board,
Selma, Ala.

Dear Sir:

Your letter is at hand requesting an opinion regarding the duty and authority of the Treasurer of the City of Selma to pay over to the Treasurer of your school board the two-mill district school tax collected in the school district of Selma.

The "City School Board of Selma" was incorporated by Act of the Legislature (see Acts of 1890, page 150); and section 4 of that Act provides that all money collected by Selma for the purposes of public schools in Selma shall be paid to the Treasurer of the City School Board of Selma, to be disbursed by him under the direction of the City School Board of Selma.

The Constitution of 1901, by section 256, declares "The Legislature shall establish, organize and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years."

Construing a like provision in the Constitution of 1875, the Supreme Court said: "While there can be no question of the power of the Legislature to establish separate school districts, and to create them bodies corporate, as auxiliaries in the administration of the general system, the Constitution makes no provision for such districts, and no implied powers arise." Schultes v. Eberly, 82 Ala. 242.

The system of public schools established by the Act of 1919, page 567, *et seq.* in Section 5 of Article 8, contains the following: "The City Treasurer shall be custodian of the school funds of the city. He shall receive and hold all moneys to which the Board of Education is entitled by law, or which may come into his possession."

It is manifest from the face of the act that it was the intention of the Legislature that the act should have a general field of operation, with the exceptions hereinafter noted. The title of the act contains a subdivision reading as follows:

"An act to provide a complete educational system for the State of Alabama," Section 45 thereof repeals all laws and parts of laws in conflict with the act. A special statute is repealed by a later general statute dealing with the same subject, if such intention appears from the general act. State v. May, 49 Ala. 376.

Therefore, unless exceptions are contained in the General Act, the City of Selma comes under the operations of the general law, insofar as the special statute conflicts with the general act.

Section 23 of Article 8 of the Act of 1919, *supra,* excepts the City of Selma from the operations of this general law, only as follows:

"The provisions of this Act shall not apply * * * to the method of electing the members of the Board of Education in any city where the members of the board hold office for life."

However, it will be noted that the above exception is foreign to the question as to who is the proper custodian of said funds, and as the General Act makes no exception in favor of the City of Selma from the operations of the General Act as to the custody of said funds, I am of the opinion that the treasurer of the

City of Selma is the legal custodian of school funds belonging to the City of Selma.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

January 16, 1924.

Hon. J. A. Carnley,
Elba, Ala.

Dear Sir:

Yours of January 14th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You write as follows:

"Will you please give me your opinion at once as to deed tax on a turpentine lease * * * being $100 per 1,000 cups on a large quantity of timber for three years. I estimated the value of this at $10,000 and charged $10 deed tax. I construed it to sell interest in real estate."

In reply will say that a written lease for a term of years is a conveyance of property and is entitled to record in the office of the judge of probate as a conveyance. Milliken vs. Faulk, 111 Ala. 658. It is, in our opinion, immaterial so far as the deed filing tax is concerned whether the property conveyed is real or personal property. Section 1 of House Bill 845 reads in part as follows:

"* * *upon all such instruments which are executed to convey real or personal property situated in this State of the value of five hundred dollars or less, there shall be paid," etc.

In other words, all written instruments which convey real or personal property and are entitled to record under any of the provisions of Articles 3 or 4 of Chapter 68 of the Code of 1907, must pay the filing tax under said House Bill 845, except the following:

1. Mortgages;

2. Deeds of trust or other instruments in the nature of a mortgage or deed or other instruments with vendor's lien, except that part of the purchase price paid in cash or other article of value and which pay no other privilege tax for recording.

We are of the opinion that such an instrument as you name is a conveyance of real or personal property and that it does not fall under the classes excepted from the operation of said House Bill 845.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

January 17, 1924.

Hon. Thomas D. Brooks,
Superintendent of Education,
Hamilton, Ala.

Dear Sir:

Your letter to the Attorney General is at hand. From the statements in your letter the warrant for the sum of $300.00 was issued to the attendance officer, by the commissioners court of your county for services of the attendance officer of Marion County for the scholastic year 1922-23 and the treasurer of the county funds has refused to pay the same.

You state that the Court of County Commissioners agreed to pay this sum before the services were performed, and that the warrants are now owned by the Marion County Banking Company.

Section 5 of Article 15 of the School Act of 1919, to which you refer, authorizes the County Board of Education, City Board of Education and Court of County Commissioners to jointly employ a person or persons to carry out the provisions of said Article 15, and such additional duties as may be assigned them by such boards or governing bodies, in connection with the juvenile court of the county or the State Child Welfare Department.

If the attendance officer was performing duties of attendance officer of your county, and, also duties assigned to him in connection with the juvenile court of your county or State Child Welfare Department of your county, in that event, by authority of the provisions above mentioned in Section 5 of Article 15, the Court of County Commissioners, having the power to contract with him, or employ him, would also have the power to pay him for his services in connection with the juvenile court or the State

Child Welfare Department. Bice, Co. Treas v. Foshee, 97 So. 764.

If this attendance officer was not employed by the Court of County Commissioners jointly with the County Board of Education to perform joint services, then, in that event, the Court of County Commissioners would have no power to contract with, and pay him, for said services as an attendance officer.

Quoting from Bice v. Foshee, above cited, it is said: "Neither is it within the power of a county board to contract with a person to perform acts which are part of the official duties imposed by law on other officers of the County or State. Where employment for particular services is expressly and fully covered by statute, the board has no power to exceed such authority."

Section 12 of Article 15 of the same Act says: "The attendance officers who are employed by the County or City Board of Education shall be paid by the respective boards of education such salaries as may be required to secure efficient service." * * * and, "shall be paid as other employes of the County or City Boards of Education are paid," which is from the public school funds of the county. (See Article 5 of the same Act.) In the event he was only an attendance officer, the minutes of the County Board of Education should show this employment and the amount of the salary this officer is to be paid. With the payment of this salary from the public school funds, this warrant should be returned to the Court of County Commissioners and cancelled.

Yours very truly,
O. B. CORNELIUS.
Assistant Attorney General.

January 19, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of the 18th inst. and inquiries from several of the probate judges of the State requires this office to advise whether or not counties can legally pay the expenses of the presidential preferential primary for which provision is made by the Act approved September 18, 1923.

General Acts of Alabama, 1923, page 269.

The Constitution of Alabama contains the following provision, to-wit: "The Legislature shall also make provisions by law, not inconsistent with this article, for the regulation of primary elections, and for punishing frauds at the same, but shall not make primary elections compulsory."

Constitution of Alabama, 1901, Section 190.

A "primary election" denotes an election held by a political party for the purpose of selecting candidates for public office.

Morton v. State, 56 Ga. App. 586, 63 S. E. 602.
State ex rel. Brady, 102 Minn. 104, 112 N. W. 1026.

A political party is a voluntary association of electors organized for certain political purposes and is governed and acts unless otherwise provided by statute by their own established rules and usages.

Heber v. Robinson, 154 Ky. 603, 107 S. W. 1136.

Political parties existed and the character of their organization was a matter of common knowledge for a long period of time prior to the enactment of laws relating to primary elections. In Alabama, as in most other states, laws relating to primary elections are based on a recognition of political parties as governmental agencies, and are generally intended to maintain the existing organization and usages of the party. Code of Alabama, 1907, Chapter 16, Sections 512-537; General Acts of Alabama, 1915, page 218; Baer v. Gore (W. Va.) 99 S. E. 530.

When we consider the long established usages of political parties, and the recognition of their existing organizations, it is evident that the Constitutional inhibition against compulsory primaries was for the purpose of reserving to the regularly constituted organization of the political party, the privilege of determining in accordance with its established rules whether or not such party should hold a primary election to nominate a candidate for public office. It would be absurd to conclude that the holding of

a primary election was optional with a political party when the law permitted one person in whom the party organization had vested no authority in the premises to compel such political party to hold a primary election. In this State, the consent of a political party to hold a primary election is given by an executive committee which the party organization constitutes its governing authority. Any law which makes it possible to compel a political party to hold a primary without the consent of the party's duly constituted authority to act in such matter is a compulsory primary law and violative of the quoted provision of Section 190 of the Constitution of Alabama.

What is known as the "presidential preferential primary act" contains the following provision, to-wit:

"Section 1. That whenever a citizen of the State of Alabama is a candidate for the nomination by any political party as its candidate for the election as President of the United States, and files his declaration of such candidacy, on or before January 1st of the year in which the nomination is to be made, which declaration shall be signed by the candidate in person, and acknowledged before some officer authorized by the laws of Alabama to take acknowledgment, and which said declaration shall be filed in the office of the Secretary of State of Alabama, and with the chairman of the State Executive Committee of the political party a primary election shall be held the second Tuesday of March of the year in which said nomination is to be made for the expression by such political party of its preference of the candidate for such nomination."

It will be noted that this law does not leave to the organization of the political party, or those duly authorized to act in behalf of the organization the privilege of determining whether or not the party should hold a primary election. The acts make the political party and those duly authorized to speak in its behalf subservient to the wish and will of one citizen of Alabama in whom is vested no authority to act for such political organization. Reduced to the greatest possible absurdity, this law permits one person to compel a political party of two hundred thousand and one voters to hold a primary election against the wishes of two hundred thousand of the members of the party. Such an act clearly makes primary elections compulsory and is unconstitutional.

It follows that I am of the opinion that the counties cannot legally pay the expense of a primary election provided by the Act approved September 13, 1923, known as the "Presidential Preferential Primary Law." The fact that one of the political parties through its governing authority has called a primary for this purpose, on the same date named in this act, will not serve to authorize the payment of the expenses of such primary election by the counties, inasmuch as the general primary law requires that primary elections held at the expense of the State and counties by political parties shall be held on the second Tuesday in May of every presidential election year. (Acts 1919, page 213.)

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

January 22, 1924.

Mr. A. A. Patton,
Probate Clerk,
Enterprise, Ala.

Dear Sir:

We have your letter of January 17th. You state as follows:

"Please advise me at once if I should collect a deed tax on a mortgage transferred from Federal Land Bank to an individual. The Federal Land Bank has an exemption from paying tax on mortgages, and I have a mortgage transfer filed here for record in the sum of $7,900, transferred to C. W. Simmons. The transfer fee (and tax, if any) to be paid by the Federal Land Bank."

In reply will say the recording of the transfer of a mortgage is for the benefit of the transferee. If the Federal Land Bank agrees to pay the filing tax for him, I can see no reason why it should not be allowed to do so.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

January 23, 1924.

Hon. George L. Malone,
Probate Judge,
Fort Payne, Ala.

Dear Sir:

Replying to your inquiry contained in your letter of the 16th instant, I beg to advise you as follows:

The power of counties to give relief and support to paupers is bestowed by Chapter 37 of the Political Code of 1907. Under the provisions of the sections contained in this chapter (Sections 1598-1617) a limit of one month is fixed upon the right to support a pauper outside of a poor house, and then only in cases of emergency. Political Code 1907, Section 1607. State ex rel. Farmhouse v. Mills, County Treasurer, 174 Ala. 233, 57 South. 233.

Under the provisions of the Code and ruling of the Supreme Court, I think it clear that no authority exists for boarding a pauper in private homes, although this might be the most economical method.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 2, 1924.

Hon. J. M. Moore,
Commissioner of Agriculture,
Capitol.

Dear Sir:

Your letter of February 1st addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if it is permissible under the law for you to transfer any funds that may be spared from the appropriation for printing of fertilizer tags, and the appropriation for printing feed tags, stamps and the appropriation for the printing of the Markets Journal to appropriation covered under Articles 6, 13 and 25 of the General Agricultural Bill of 1923, and also to supplement the three hundred dollars appropriated therein for trav-

eling expenses of the supervisors of the division of markets and funds, feeds and tags. You wish to know also whether or not Article 18 with reference to kerosene is self-supporting or whether or not the funds accruing from the inspection of kerosene oil under the provision of said Article 18 are to be set aside in the State Treasury for the purpose of administering the law contained in said Article 18.

In reply to your inquiry will say that the appropriation made by the last Legislature in Section 1 of Article 43 of said Agricultural Bill contains two classes of appropriations. In the one class it is imperative that your department spend the amount appropriated for the purposes appropriated. That is, the $7,500 per annum for administering the law under Article 25 of said Act, the $40,000 per annum for administering the law under Article 37 of said Act, and $30,000 per annum for administering the law under Article 41 of said Act, the $4,000 per annum for administering the law for soil survey, etc., and $7,000 for administering the law under Article 21 of said Act. The appropriations made for printing fertilizer tags, for printing said feed tax stamps, for contingent funds, for traveling expenses of supervisors, for printing Markets Journal, and for general administrative expenses, as well as for printing, including bulletins and other periodicals belong to a second class, and it is not imperative that these amounts shall be spent each for the purpose appropriated.

Under the provisions of Section 8 of Senate Bill No. 74, approved February 11, 1919, we have the following provision:

> "Section 8. That no transfer of funds appropriated for any item in the appropriation for any state office, department, commission, board or institution shall be made except upon the written request of the chief officer or officers of such state offices, departments, commission, board or institution, to the Budget Commission, which request will be granted in writing by the Budget Commission, if in its judgment, such a transfer of funds is deemed necessary or expedient."

We are of the opinion that Section 8 above quoted is still operative and that is is still permissible for you upon the granting of such request by the Budget Commission to transfer any funds that may be spared from the printing of fertilizer stamps, the

printing of feed tax stamps, the printing of Markets Journal, and from the general administrative expenses of the Board of Agriculture to the purpose of administering the law under Articles 6, 13 and 25, and to supplement the amount of three hundred dollars appropriated for traveling expenses.

It is our opinion that the provision found in Section 5 of said Article 43; namely:

> "If at the end of a fiscal year there shall be any net proceeds of the funds accrued under the provisions of this Act, such unexpended balance shall revert to the general funds in the State Treasury,"

means simply such unexpended balance as remains after the law is administered as provided in said agricultural code, and as might be modified by the provisions of said Section 8 heretofore quoted.

In answer to your question with reference to Article 18 of the General Agricultural Bill, approved September 27, 1923, will say that in our opinion, it is clearly the legislative intent that any money arising under the provisions of said Article 18 not otherwise appropriated under said Article 18 may be used by your department for the purpose of administering the law with reference to said Article 18. It seems from the language of this article that such is clearly the intent and this is strengthened by the fact that no special appropriation is made for administering the duties placed upon your department with reference to said Article 18.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

February 6, 1924.

Hon. Sidney H. Blan,
Secretary of State,
Capitol.

Dear Sir:

Your letter of the 20th of last month requests to be advised with what official duty you are charged relative to the certificate to the probate judges of the names of candidates who have filed

declarations of their candidacy in the primary election to be held March 11, 1924, for nomination as a candidate for President of the United States, either:

First: Because of the provisions of what is known as the Preferential Primary Act of 1923, or

Second: Because of the action of the governing authority of the State Democratic Party calling a primary for the nomination of a candidate for President of the United States.

First: In my opinion the preferential primary law of 1923 is void. Its provisions, therefore, cannot charge any State or County officer with any duty nor authorize the payment by the State or County of any expense of a primary to be held March 11, 1924.

Second: The primary law of 1915 does charge certain State and County officers with certain duties relative to primary elections. Acts 1915, page 219, also page 723. Acts 1919, page 969. These State and County officers are charged with duties only in such primary elections as are covered by the provisions of these Acts. It will be noted that Section 4 of this primary law provides that "All primary elections hereafter held by any political party in this State for the nomination of any State, district, county or municipal officer shall be held and conducted under the provisions of this Act." The primary of March 11, 1924, is not for the nomination of either a "State, county or municipal" officer, if it is for the nomination of a candidate for a national office. The office of President of the United States is a national office. It follows that a primary for the nomination of a candidate for President of the United States does not have to be held or conducted under the terms of the primary law of 1915, as amended. Only when a primary election is held under such law can the governing authority of a political party charge any State or County officer with any duties relative to holding a primary election. It is clear that the governing authority of the Democratic Party by its order to hold an election on March 11, 1924, is not holding a primary under the provisions of the primary law of 1915, so amended, and, therefore, no State or County officer is charged with any duty, nor can the State or County incur any expense relative to such primary election.

If any law governs such primary election other than the law of the political party holding the same, it is the provisions

of Chapter 16 of the Political Code of 1907. Primaries which can be held under this chapter are held exclusively by the party authorities. Section 536 of this chapter of the Code specifically provides "that no expense for any primary election shall in any way become a charge against the State, any county or any municipality."

It is, therefore, my opinion that the primary election to be held March 11, 1924, is not being held under the primary Act of 1915, as amended, and therefore, charges neither the Secretary of State nor probate judge with any duty relative thereto. Furthermore, neither the State, any county, or any municipality can incur any expense in the holding of such primary election.

I have included the question of expense that this opinion might serve to cover the various questions asked this office by probate judges as well as your inquiry.

Very truly yours,
HARWELL G. DAVIS,
Attorney General.

February 8, 1924.

Mr. A. N. Fain, Chairman,
Board of Registrars,
Ozark, Ala.

Dear Sir:

Replying to yours of the 31st ult., I am of the opinion that you are not authorized to register applicants who will reach the age of twenty-one years before the next election to be held in the county.

The Act passed in 1915 providing for the registration of electors, expressly provided for the registration of such minors. (Acts 1915, page 239, Section 22.)

This Act has been repealed by Acts 1920, page 124, which repealing Act made no provision for the registration of minors. I am of the opinion that the provision of 1915 was repealed because of its unconstitutionality.

Section 177 of the Constitution defines an elector, providing that he shall be entitled to vote at any election of the people. One of the qualifications of an elector as set out in this section is an age of twenty-one or upwards.

Section 181 of the Constitution reads as follows:

> "After the first day of January, 1903, the following persons, and no others, who, if their place of residence shall remain unchanged will have, at the date of the next general election, the qualifications as the residence prescribed in Section 178 of this Article, shall be qualified to register *as electors*, provided they shall not be disqualified under Section 182 of this Constitution." (Emphasis provided.)

Although we find no express provision that only persons over twenty-one years of age shall be allowed to register, we think that is the reasonable conclusion from the two sections of the Constitution above referred to.

Section 177 provides that an elector is one who is is qualified to vote; that one of the qualifications is an age of twenty-one years or over.

Section 181 provides who shall be qualified to register "as electors." Although the age limit is not expressly provided, it seems clear that only *electors* were intended to be registered, and an elector must be twenty-one or over.

Another provision that strengthens my conviction in this conclusion is the express provision of the section above quoted, that one who shall have the qualifications as to residence at the next general election shall be allowed to register. This express provision as to *residence* negatives, we think, the presumption of an intention of allowing one to register who shall have the qualifications as to *age* at the next general election.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

February 11, 1924.

Hon. P. B. Jarman, Jr.,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

The appropriations for the years 1911-1915 and 1919 to the Department of Archives and History were made to that depart-

ment in the furtherance of the purposes for which the department was created. The Code of 1907, Section 794, declares that the objects and purposes of the department, among other things, are the following:

> "To encourage and assist in the establishment of public school libraries, and in the improvement and strengthening of those already in existence; to give advice and provide assistance to librarians and library workers in library administration, methods, and economy, and to conduct a system of traveling libraries."

I am of the opinion if the purchases you mention in your request for an opinion are necessary in carrying out the said purposes, that the same may properly be paid out of the appropriations for said years.

In addition to the provisions above quoted are the following words, found in the various appropriation acts:

> "For the maintenance of the said department." Code 1907.
>
> "For the further development and enlargement of the library extension work, the public reference work, and the several other activities and needs." Act 1911.
>
> "For the ordinary expenses and conduct of the Department of Archives and History to be extended by the director so as to develop in the fullest and broadest manner, the several activities and needs of the department." Acts 1915.
>
> "For the support and maintenance of the department." Acts 1919.

The department is under the control of a Board of Trustees, who are to be guided by the above provisions of law, under Section 796 of the Code, the board "may control and expend such appropriations as may be made for the maintenance of the department."

Giving due regard to the above provisions of law, I am of the opinion the account for the books purchased is one which may be paid out of the appropriations to the department.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

February 13, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Replying to your request to the Attorney General for an opinion as to whether or not in the Inferior Court of Montgomery County, on a judgment rendered for the plaintiff, and on which an execution has been issued and returned, "no property found" after twelve months may the clerk issue an execution against the plaintiff for the costs created by the plaintiff, and may the sheriff enforce the collection by levy and sale, I beg to advise you as follows:

Section 27 of the General Acts of 1919, page 161, provides, "That the fees and costs that are now or may be hereafter allowed by law in the circuit courts of the State in civil cases, shall be taxed and collected in such cases in such courts, as provided by law for taxing and collecting costs in the circuit courts."

Section 23: "That it shall be the duty of the clerk of such court after the lapse of five days from the rendition of judgment therein, if an appeal is not taken, or motion made to set aside, vacate or modify such judgment or to grant a new trial as hereinabove provided, to issue an execution for the satisfaction of the judgment, which must be signed by him, dated on the day it was issued, and made returnable thirty days from date of issue, and he shall place the same in the hands of the sheriff: alias writs shall be made returnable in like manner."

Section 24: "That all process of whatever kind or nature issued out of such court, shall be addressed to any sheriff of the State of Alabama, and shall be executed with diligence by the sheriff."

Section 4147 of the Code of 1907 is as follows: "When execution has been issued on a judgment within a year after its rendition, and has not been returned satisfied, another execution may be issued at any time within ten years after the rendition of the judgment, without a revival of the judgment."

Section 4148 permits a scire facias when the execution did not issue within a year from the rendition of the judgment.

The statute expressly declares that if an execution is issued within a year after the rendition, another execution may issue on the judgment at any time within ten years after the rendition of the judgment without a reviver. In the decision of the court in the case of Brevard's Executors v. Jones, 50 Ala. 221, it was said: "The statute very clearly declares that 'no execution shall issue on a judgment or decree of the circuit, chancery or probate court, on which an execution has not been sued out within one year after its rendition until 'the same has been revived by scire facias.' The Code of 1852 was to the same effect in respect to judgments of the Circuit Court. The law previously, as far back as 1807, allowed execution on the judgment of any court of record, within the year. In 1835 the Legislature because doubts had arisen whether a scire facias would lie on a judgment where execution had not issued within the year and day, enacted that the plaintiff should have it. If it was doubtful whether a scire facias would lie, it must have been certain that an execution could not have issued. Under these older laws, this court has held, that executions issued after the year and day were not void, but voidable at the option of the defendant alone, unless other persons had in the meantime acquired rights."

To the same effect that the execution, in the above stated event, is not void, but voidable at the election of the defendant, are the following cases:

DeLoach v. Robbins, 102 Ala. 288.
Herzberg Bros. v. Hollis, 119 Ala. 496.

However, under the facts stated in your letter the judgment does not lie dormant, because of the fact that an execution was issued within twelve months after the rendition of the judgment.

The defendant is not in position successfully to assert that the judgment is not a live judgment, therefore, could the plaintiff do more than the defendant could successfully do, if an execution is issued on the live judgment against the plaintiff for the costs created by the plaintiff in obtaining his judgment?

Section 4090 of the Code of 1907 says that, "when execution against the defendant is returned 'no property found' execution may issue against the plaintiff, in the name of the clerk of the court, for all the costs created by him in obtaining his judgment."

There is no statute declaring that an execution against the plaintiff for the costs would have to be issued within twelve months after rendition of judgment against the defendant or within twelve months after execution against the defendant has been returned "no property found."

Therefore, we find a valid judgment on which execution may issue against the defendant, and on which one execution on the live judgment against the defendant has been returned "no property found" and with no legal impediment against the issue of an execution against the plaintiff for the costs created by the plaintiff in obtaining his judgment as provided expressly by Section 4090 of the Code.

It is my opinion, under the facts stated, the clerk had a right to issue the execution, and that the sheriff has the authority, by virtue of the execution, to collect the same out of any property of the plaintiff subject to levy and sale as provided by Section 4091 of the Code of 1907.

Hullett v. Hood, Admr., 109 Ala. 345.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

February 15, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

In your letter to the Attorney General relative to certain matters concerning the circuit court of Madison County, there are several questions asked, which for convenience I am answering in the order in which they are asked.

The Act of 1919 entitled "An Act to provide for the institution and prosecution of misdemeanors in the circuit court of Madison County otherwise than by indictment by the grand jury" (Local Laws 1919, page 17) appears to have been regularly enacted.

The Act provides that prosecutions for misdemeanors may be begun in the circuit court of Madison County on affidavit made before the clerk of the Circuit Court of that County.

Section 8 of the Constitution provides for indictment in all prosecutions, except "in cases of misdemeanor, the Legislature may by law dispense with a grand jury and authorize such prosecutions and proceedings before justices of the peace or such other inferior courts as may be by law established."

One of the earliest decisions of the Supreme Court on this question is the case of Clerk v. State, 46 Ala. 307. The defendant was arrested in the county court on a charge of assault and battery. A demand was made by defendant for a trial by jury. The case was sent to the Circuit Court of Barbour County. In that court the defendant pleaded "not guilty." He was convicted and appealed to the Supreme Court. The court said:

> "Indictment, then, is the only legal mode of proceeding, in such a case as this in the Circuit Court. That court cannot proceed to apply the law in any other manner. Constitution Ala. A A 1 Section 9."

This case was cited in Frost v. State, 124 Ala. 71, which was a case for carrying a pistol, in the following language:

> "The necessity for indictment in cases so sent from the county court grows out of the fact that an indictment was the only mode provided by statute for attaching the jurisdiction of the Circuit Court to a criminal case. Clark v. State, 46 Ala. 311. There is no constitutional restriction upon the legislative power to dispense with indictments in cases of misdemeanors."

In the Witt case, 130 Ala. 129, the defendant was tried in the Circuit Court of Sumter County on an affidavit charging violating the liquor laws. On a demand for a jury it had been transferred from the County Court to the Circuit Court. There was an act allowing such a course. The Supreme Court said:

> "In this case there is a clear implication that cases begun by affidavit in the County Court shall when transferred to the Circuit Court be there tried on the complaint as made by the affidavit, and without action by the grand jury. To so enact was fully within the power of the Legislature. The

present Constitution (1875), different in this respect from the Constitutions prior to that of 1865 (Thomas v. State, 170 Ala. 61) excepts misdemeanors from its prohibition against proceeding criminally by information for indictable offenses, by providing that in cases of misdemeanors 'the General Assembly may by law dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace or such other inferior courts as may be by law established.' The first clause of this proviso giving power to dispense with a grand jury is general, and applies to Circuit Courts as well as other courts."

In the case of Larkins v. Simmons, 155 Ala. 273, the court said: "By section 8 of the same instrument (Const. of 1901) the original jurisdiction of that court (Circuit Court) in criminal cases is limited to cases in which indictments are preferred. Therefore, any enactment of the Legislature, seeking to confer original jurisdiction on the Circuit Court in matters civil or criminal beyond the outside limitations fixed by the Constitution, would be of no binding force."

The above was said in regard to an attempted act repealing the County Court of Coffee for Coffee County, in which the pending cases were to be transferred to the Circuit Court. The Act was held unconstitutional as violative of Section 106 of the Constitution, in that the notice of the intention to apply for the passage of the Act was insufficient.

In the following cases there were no acts conferring jurisdiction upon the Circuit Court to try cases of misdemeanor upon affidavit and warrant, and that was the extent of the decisions, and not based on a ground of the constitutional authority of the court under an Act authorizing such a prosecution.

Russan v. State, 15 Ala. App. 120.
Clark v. State, 46 Ala. 311.
Lewis v. State, 160 Ala. 121.

In the following cases the decisions of the court are based upon a statute enacted by the Legislature conferring on the Circuit Court authority to try cases of misdemeanor in the Circuit Court on affidavit, and in each case it is directly or

inferentially held that under Section 8 of the Constitution of 1901, the Circuit Court is an inferior Court, within the meaning of the Constitution, and that in cases of misdemeanor such acts are legal, and such prosecutions may be had in the Circuit Court upon affidavit pursuant to the acts allowing the same.

Reese v. State, 16 Ala. App. 430.
Sanders v. State, 16 Ala. App. 531.
Witt v. State, 130, Ala. 129.
Fason v. State, M. S.

The weight of authority being that such acts are not unconstitutional, I am of the opinion that this act is not unconstitutional, and that a prosecution in the Circuit Court of Madison County of a case of misdemeanor instituted by affidavit as provided by the Act is legal.

As to your second question:

"Does the Act place the cases begun by affidavit and warrant in the class with those begun by indictment sufficiently for the sheriff of Madison County to avail himself of the guard fees provided for in the Acts of 1911, page 41?"

I beg to advise that the case of Stone, Treas., v. State, ex rel Holcombe, 197 Ala. 293, is decisive of the above question. In that case it was held that Section 6638 (which is the same as to said fees as contained in the 1911 Act) makes no exceptions against the sheriff in respect to cases arising by affidavit in the Inferior Criminal Court. And, of course, the same would be true in the Circuit Court.

The third question:

"Where a defendant is convicted, sentenced to hard labor or to the penitentiary, an appeal is taken to the Supreme Court, the case reversed and remanded, a new trial had and the case finally nol prossed, is the transcript in such a case a proper charge against the fine and forfeiture fund,"

was practically answered by me in the affirmative in a former opinion; however, after careful consideration of the authorities below set forth, I do not think it is a claim against the fine and forfeiture fund, for the reason that it is only such fees of officers of court as may be included in the cost bill and for which the defendant, on conviction, in default of payment, or the confession of judgment with sureties, may be sentenced to hard labor for the county, at the rate of seventy-five cents per day, that are payable out of the fine and forfeiture fund.

It includes all costs, including officers' fees incurred in behalf of the State.

Bowen v. State, 98 Ala. 83.

The Supreme Court in the case of Burgin v. Hawkins, Treas., 101 Ala. 326, said:

> "It is only the costs incurred by the State or to which the State, if it were liable for costs, could be subjected, for the payment of which a convict may be compelled to labor. These do not include costs incurred by the defendant in making defense, whether the compensation of witnesses, or the fees of officers of court for services rendered to him."

Also in the same decision is found the following:

> "Would it not be strange and inconsistent to hold that the fine and forfeiture fund is responsible for these costs in cases in which the State fails to convict, while in case of conviction the liability is only a personal debt on the defendant?"

The act at that time did not allow payment of claims out of the fine and forfeiture fund, in cases where the state failed to convict. It is different now by Code Section 6889, in that the said fees are allowed.

The making of the transcript was at the instance of the defendant on his appeal, and for that reason, it was not an item of costs incurred by the State, for which it was liable. The same is

true of orders of continuances procured on the application of the defendant. For the reasons above given fees for these services are not chargeable against the fine and forfeiture fund.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

February 19, 1924.

Mr. C. C. Carter,
County Treasurer,
Russellville, Ala.

Dear Sir:

Your letter of February 16th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if the compensation allowed County Tax Assessors for services required by Section 46 of the Revenue Law of 1923 (Acts 1923, page 178), is a preferred claim against the county. Also if the services required by Section 47 of said Act is a preferred claim against the County.

The last sentence in said Section 47 reads as follows:

> "The court of county commissioners or court of like jurisdiction shall pay out of the general fund of the county, for making out the plat books required by this and the preceding section, a reasonable compensation to the person performing such work, which debt shall be a preferred claim against the county."

This, it seems to us, is as plain as language can make it, that it was the legislative intent that debts arising under both of these sections should constitute preferred claims against the county.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 19, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Replying to your letter of January 28th, relative to prosecutions in the Circuit Court of Madison County, found on page 17 of Local Acts of 1923, I beg to advise that the first two questions have been answered in a recent opinion to you.

Your third question: "What fees is the clerk entitled to under this Act?" did not enter the questions discussed in the other opinion.

Section 6635 of the Code would apply to cases begun in said court by affidavit, insofar as the fee is prescribed for a service, mentioned in said act, which the clerk had performed in a case.

There is no provision made for the clerk to be paid for the affidavit instituting the prosecution, therefore, the clerk is not entitled to a fee for administering the affidavit. There is provision made of 50 cents for the warrant, or writ of arrest. Copeland v. Jefferson County, Section 6635, supra, 192 Ala., page 12; for that reason he is entitled to that item of fees.

In question five you ask if the clerk, in a criminal case, without an order of court, on a continuance of the case, at the next term may re-subpoena the state witness, and charge for the same, and will the sheriff be entitled to his fee for re-summoning said witness.

"No fee must be demanded or received except in cases expressly authorized by law." Code 1907, Section 3693.

"An officer claiming fees or costs must point to some clear and definite provision of the statute authorizing the claim; and against him the language of the statute must be strictly construed."

Copeland v. Jeff. Co., supra.

Section 7881 of the Code expressly states that if the case is continued it shall not be necessary to re-subpoena the witnesses to subsequent terms, but they shall be required to attend at such subsequent terms, until such cases are disposed of.

Section 7883 makes an exception in cases reversed by the Supreme Court. In that event new subpoenas must be issued for

the State witnesses, and also for the defendant's witnesses on his application. Also see Sections 7882 and 7884.

All work performed by the clerk and sheriff in issuing and serving subpoenas in excess of the numbers of times allowed by said sections could not be chargeable to the defendant on conviction, nor against the fine and forfeiture fund, under any of the provisions of Sections 6888 or 6889 of the Code. Any such charges against the fine and forfeiture fund are illegal and the officer receiving the same should be charged with the same as an illegal payment and the same should be refunded.

Answering your sixth question as to whether the clerk is entitled to compensation for making a final record of a State case which was begun in the Circuit Court of Madison County by affidavit and warrant, and which is nol prossed, I beg to advise that the clerk is entitled to the fees for the making of the final record in such proceedings, and the final record of said proceedings should include the following:

"All the proceedings relating thereto, except the subpoena, affidavits for continuance, commissions to take testimony, evidence and executions." Code Sec. 3272, Sub. Div. 9.

The following is an exception to the above:

"The orders, judgments and decrees entered upon the minutes of the court are parts of the record of the causes to which they pertain and need not be copied into the final record. If so copied, no fee shall be charged therefor." Code Sec. 5733.

Answering your question No. 7, which is as follows:

If a case (begun by affidavit and warrant in Madison County) is withdrawn and filed, what fees is the clerk entitled to claim under Section 6889 of the Code against the fine and forfeiture fund? Could there be legally claimed a fee for making a final record in such a case?" I beg to advise you as follows:

It is only such fees as are provided by law which can be paid out of the fine and forfeiture fund, and since section 6889 of the Code does not provide for payment of fees of officers in the kind of proceedings as mentioned in your question, it cannot legally be paid from said fund.

Hawkins, ex rel. O'Brien v. State, 124 Ala. 102.
Burgin v. Hawkins, Treas., 101 Ala. 326.

Your question No. 8 as follows:

"Where three defendants are jointly indicted and the case is withdrawn and filed without any order evidenced on the docket by bench note entry of trial judge or on the minutes by any entry thereon, would the clerk be entitled to claim against the fine and forfeiture fund of his county a separate set of fees against each defendant?" This question is answered in the negative for the following reasons:

Section 7153 of the Code of 1907 allowing an indictment to be withdrawn and filed bases the doing of said act by the solicitor "by leave of the court." This action of the court should appear from the minutes of the court.

Sub. Div. 8 of Section 3272.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

February 19, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter to the Attorney General requesting an opinion on whether an assistant clerk of the Circuit Court of Madison County has any authority to take affidavits and issue warrants thereon for arrest of defendants to be tried before the Circuit Court, is at hand, and is referred to me for an opinion.

The act in question is H. 96, No. 44, Local Acts 1919, page 17.

The act allows an affidavit to be made before the clerk of the Circuit Court. If the act of the circuit clerk in issuing the affidavit for the institution of the prosecution is ministerial, it may be delegated to his clerk; if it is a judicial act, it may not be delegated to his duly and legally constituted clerk.

"When the law exacting its discharge, prescribes and defines the time, mode and occasion of its performance, with such certainty that nothing remains for judgment or discretion, the

duty is ministerial. Official action, the result of performing a certain and specific duty arising from fixed and designated facts, is a ministerial act."

"Judicial power is authority vested in some court, officer or person, to hear and determine when the rights of persons or property, or the propriety of doing an act, are the subject matter of adjudication. Official action, the result of judgment or discretion, is a judicial act." Merlette v. State, 100 Ala. 42.

In the case of Lloyd v. State, 70 Ala. 32, the court used the following language:

"The taking of an affidavit, and the issue of a warrant of arrest, impose duties in their nature judicial. The statute raising the jurisdiction of county courts in Madison County, confers no power on the clerk to administer such oaths."

The clerk of the Circuit Court of Madison County should refuse to institute the criminal proceedings if he has not reasonable cause to believe that an offense has been committed. The determination of this question is a judicial act which cannot be controlled by mandamus.

As said in the Merlette case, supra, "Another test for determining whether any official power or duty is ministerial or judicial, is brought into requisition by the inquiry, would its specific exercise be enforced by mandamus?"

"Judicial authority cannot in the absence of statutory authorization, be delegated or vested in a deputy, or appointee of the rightful incumbent."

In this Act judicial authority is authorized by the statute to be performed by the clerk. The Legislature had the right to confer this authority.

Pruett v. State, 141 Ala. 69.

The judicial authority has not been conferred on a deputy of the clerk, therefore, he has no authority to take the affidavit and issue the warrant of arrest instituting the prosecution in the Circuit Court of Madison County.

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

February 20, 1924.

Judge G. L. Malone,
Fort Payne, Ala.

Dear Sir:

Replying to your letter of January 14th, requesting an opinion as to whether the Acts of the Legislature of 1923, page 611, providing for the creation and investment of a sinking fund to liquidate the bonds of municipalities, applies to counties, I beg to advise you as follows:

The word "municipality" occurring in the Act is used in the sense of a "municipal corporation."

The definition given the word "municipality" in 28 Cyc., page 118, is as follows: "A municipal corporation is commonly called a 'municipality,' a word formerly employed to designate only the body of officers of the corporation, but now by judicial recognition and common use enlarged to a synonym of the corporation in its entirety. When such an intention on the part of the Legislature appears, the term 'municipality' will be construed in a broad sense so as to include counties and other quasi-municipal corporations."

Cyc. defines a municipal corporation as follows: "A municipal corporation is a legal institution formed by charter from sovereign power, erecting a populous community of prescribed area into a body politic and corporate, with corporate name and continuous succession, and for the purpose and with the authority of subordinate self-government and imprisonment and local administration of State."

"It (definition) impliedly excludes parishes, counties, townships and districts, which are almost municipalities and yet are deficient in some of the essential attributes of a municipal corporation."

In Askew v. Hale County, 54 Ala. 639 the Supreme Court says: "A radical error, fatal to the argument, is in treating the county as a municipal corporation. It has corporate characteristics, but is not a municipal corporation, though often so termed. It is an involuntary political or civil division of the State, created by statute to aid in the administration of government. It is in its very nature, character and purposes, public and a governmental agency, or auxiliary, rather than a corporation."

In the case of Dunn v. Court of County Revenue of Wilcox, 65 Ala. 144, the court said:

"That the phrase 'municipal corporation' is used in two distinct senses in our State Constitution, as it often is in common parlance, seems quite obvious. In its more general sense it may be made to include both towns and counties, and other public corporations created by Government for political purposes. In its more common and limited signification, however, it embraces only incorporated villages, towns and cities."

This distinction between municipal corporations proper, such as towns and cities voluntarily organized under general incorporating acts or legislative charters, and what have been termed 'involuntary quasi corporations,' such as counties, sometimes generically termed municipal, as pertaining to the civil and political administration of matters of state, is well defined and fully recognized in our jurisprudence."

Judge Stone, in the decision of Dillard v. Webb, 55 Ala. 468, cites the definitions of T. Dillon Mun. Corp., Section 10, as follows:

"Thus, an incorporated school district, or county, as well as a city, is a public corporation; but the school district, or county, properly speaking, is not, while the city is a *municipal* corporation." In that decision it is held the 'Canebrake Agricultural District,' as established by Act approved February 20, 1866, is a public corporation, though not technically a municipal corporation."

The above definitions of a municipal corporation or municipality by the Supreme Court show clearly that the natural, plain and ordinary signification of the word does not include a county as a municipality. In interpreting the statute a departure from the natural meaning of the words is not justified since the language used is not ambiguous.

Wetumpka v. Winter, 29 Ala. 651.
Reese v. State, 73 Ala. 18.
B. R., L. & P. Co. v. Green, 4 Ala. App. 417.
Thuman v. State, 18. Ala. 276.
Carlisle v. Godwin, 68 Ala. 137.
Bartlett v. Morris, 9 Port. 266.
Bozeman v. State, 7 Ala. App. 151.

To construe the Act as including counties, would be contrary to the legal rules of interpretation as set forth above. For this reason, your county is without authority of law to make the proposed investment in the securities, as a sinking fund.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

February 20, 1924.

Mr. Coleman D. Shepherd, Attorney,
Jasper, Ala.

Dear Sir:

Your letter of February 8th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You ask opinion of this office as to the proper charge for recording a patent. It is our opinion that a patent is a deed, or an instrument in the nature of a deed, and, therefore, liable to the privilege tax for recording under the provisions of House Bill No. 845 passed at the last session of the Legislature.

By the provisions of this bill the measure of the filing tax is based upon the value of the property conveyed and not upon the consideration paid. It is made, by this act, the duty of the one offering a deed for record to furnish the Judge of Probate with the data for estimating the correct value of the property conveyed and provides that:

> "The determination by the Judge of Probate of the amount of tax due on any such instrument is hereby declared to be a ministerial act and shall not preclude the subsequent collection of the correct amount of tax if the value of the property thereby conveyed is not fully disclosed to the Judge of Probate when such instrument is offered for record."

It is our opinion that the correct measure for the filing tax is the fair market value, for cash, of the land conveyed at the date of the conveyance.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

February 28, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

In reply to your request for an opinion from the Attorney General, I beg to advise you in answer thereto as follows:

On process in civil cases issued out of the Municipal Court of Birmingham, the constables in Precincts 10, 21, 34, 37 and 46, in Jefferson County, are entitled to receive fees as follows:

In civil cases when the amount in controversy is under $20.00, the constable is entitled to receive, for performing services, the amount of fees allowed to constables by Section 3725 of the Code of 1907. When the amount in controversy is $20.00 or over, the constable is entitled to receive the same fees as sheriffs for performing like services.

Local Acts of 1911, page 372, et seq.
Local Acts of 1915, page 231, et seq.
General Acts of 1911, page 548, H. 667.

You ask if the constable is entitled to any commission upon the amount of the demand sued for in an attachment suit, levied on personal property, which is replevied, or the cause is settled and dismissed without a sale; or, (2) where there is no record as to the disposition of the cause, and the amount of the same.

Answering the first part, I am of the opinion, he is entitled to one-half the commissions upon the amount of the demand sued for, allowing him for making money on executions. See Code, Section 3722, of 1907.

Morrow v. Rosenstihl Bros., 106 Ala. 198.

Answering the second part, I am of the opinion if the levy was made on the personal property, which was replevied, or the cause was settled without a sale the constable would be entitled to the commissions above stated, even if the record failed to show the disposition of the cause. I say this because the section allows it or levy and replevy of the property, to be paid by the party replevying

the property. It is not conditioned on a final disposition of the case.

You ask if the attachment suit proceeds further, even to judgment for the plaintiff, which amount is paid into court without a sale of said property by the constable, what commissions, if any, would he be entitled to?

Unless the property is sold under the attachment writ the constable would not be entitled to the other half commissions as provided by said section.

You ask if the constable is entitled to any fees when the records of the court fail to show that he has executed such processes placed in his hands.

Giving observance to Section 3693 which says that no fee must be demanded or received except in cases expressly authorized by law; and Section 2940 of the Code which says that the officer executing the writ of attachment must endorse such levy or service thereon; and Section 3696 of the Code of 1907, which says that fees allowed by law are due only at the termination of the suit, except fees for transcripts of papers filed in the cause, which are due when services are performed, I am of the opinion that these sections of law will not allow any fee when the records of the court fail to show that he has executed such process placed in his hands and there is no termination of the suit.

If this failure of the records to show the execution of the process is the result of a loss of the original process, this may be substituted and cured under the power contained in Section 5739.

Answering the other questions relative to the clerk of said court: The Act of 1919, page 455, declares said courts are courts of record. The General Acts of 1911, page 200, is applicable to said courts. The following duties by said Act are required to be performed by the clerks of said courts:

1. On the first of January of each year to file with the county treasurer a full and complete report of all witness fees collected by them or received by them from their predecessors in office which have not been disbursed to the persons legally entitled thereto and shall pay into the County Treasury all such witness fees which have been collected by them or their predecessors more than two years preceding the making of said report. Section 1.

2. All clerks of courts of record upon expiration of their terms of office shall pay over to their several successors in office all witness fees in their hands and which have been collected by them and which have not been paid into the County Treasury under this Act and shall furnish such successors a full and complete statement showing the names of all witnesses for whom said fees were collected, together with other facts regarding the same. Section 3.

3. That after such payment to their several successors in office or to the County Treasurer, as the case may be, they shall be discharged from further liability in regard to all fees so paid over, either to their successors or to the County Treasurer. Section 3.

The above Act has been construed in the case of Blake v. State, ex rel. Going, et al., 178 Ala. 407.

If the witnees fees have been in the hands of the clerk for two years or more it is his duty to turn the same over to the County Treasurer; if for less than two years, it is his duty to turn the same over to his successor in office.

A failure to do either is a breach of his official bond for which an action will lie. Also, Section 7452 of the Criminal Code of 1907 is applicable. Section 4 of the Act of 1915 (Local Acts), page 233, provides that the bond of the clerk shall also be conditioned to pay over all moneys to the proper officers and persons to whom it is payable and to faithfully account for all the moneys coming into his hands by virtue of his office and upon the said bond there shall be the same liabilities and remedies as upon a bond of a clerk of the Circuit Court.

One of the liabilities on the bond of the circuit clerk is to pay over money to his successor. Again, any clerk of a court of record who fails to perform any duty imposed on him, for the failure to perform which no other punishment is provided, must, on conviction, be fined not exceeding $200.00. Code of 1907, Section 7464.

It is a duty of the clerk to demand of his predecessor in office to turn over to him, as clerk, all books, papers and money belonging to the clerk's office.

Hoping the above fully answers your inquiries, I am

Yours very truly, O. B. CORNELIUS,

Assistant Attorney General.

February 29, 1924.

Hon. A. F. Harman,
Superintendent of Education,
Montgomery, Ala.

Dear Sir:

Replying to your recent request to the Attorney General for an opinion as to whether a child becoming six years of age after October 1, 1923, and during the month of October would be entitled to attend the public schools of the county during that year, I beg to advise as follows:

Section 19 of Article 5 of the Educational Bill provides "that schools for white children shall be free to all white children over six years of age," Acts 1919, page 586.

"The general administration and supervision of the public schools and of the educational interests of each county * * * shall be vested in the County Board of Education *except as* otherwise provided by law." Article 5, Section 1.

"The County Boards of Education are authorized, empowered, directed and required to maintain a uniform and effective system of public schools throughout their respective counties."

"The County Board of Education, *subject to the provisions of this Act* shall determine with and on the advice of the county superintendent of education the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the schools." Article 5, Section 7.

In the case of Bryant v. Whisenant, et al., 167 Ala. 325, the Supreme Court said:

> "It is manifest that chapter 41 of the Code of 1907, which relates to the public school system of the State, contemplates that tuition shall be absolutely free to all minors of the State over the age of seven. We think, however, there is a well defined distinction between tuition and a reasonable incidental fee for heating and lighting the schoolroom."

Since the above decision was rendered the Act of 1919 has gone into effect, placing the school age of children entitled to attend the public schools free to over six years of age.

Section 256 of the Constitution of 1901 says:

"The Legislature shall establish, organize, and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years."

This article 5 of Section 19 does not contravene the Constitutional provisions, in that the act does establish a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. An Act denying a child between the ages of seven and twenty-one years from the public schools might violate the Constitution. The Constitution does not prohibit the admission into the public schools of children who are under seven years of age, nor deny the Legislature the authority to pass an Act allowing children under seven years of age to attend the public schools established by lished by the Legislature.

Observing that the powers granted the County Board of Education above quoted, are all subject to provisions of the *Act,* and that the Act especially provides the schools shall be free to all children over six years old, I am of the opinion the board would have no right to refuse a child over six years of age admission to the public schools, and to allow it to attend *free.*

The question as to when a child is over six years of age is analogous to when one ceases to be a minor, and is governed by the same rules of law. "The age of majority is attained on the day preceding the twenty-first anniversary of the person's birth, or on the corresponding day, if another age than twenty-one has been fixed by statute as that of majority."

22 Cyc., page 512, Sub. Div. 2.

Measured by the same rules a child is six years of age on the day of, or day preceding, its sixth anniversary of its birth. Wherefore, I conclude a child is over six years of age after it has passed the sixth anniversary of its birth.

For the reasons given it is my opinion the County Board of Education would have no discretion as to the admission of such a child in the public schools irrespective of the date of attaining such age, during the term of the school.

Yours very truly, O. B. CORNELIUS,
Assistant Attorney General.

March 5, 1924.

Hon. William W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

Herewith is returned the letter of the 3rd inst. addressed to you by Mr. L. Sevier, requesting that you order a State voucher drawn in favor of the Republic Iron & Steel Co. for the amount of $200.74 for the purpose of refunding to the 106th Observation Squadron, National Guard, the State tax paid on 83.02 acres of land rented by the Squadron from that company. Attention is called by Mr. Sevier to the fact that the County of Jefferson and the City of Birmingham have indicated that they are refunding the tax collected by them on this property.

The city commission of Birmingham has authority to make an appropriation to this National Guard Squadron if it sees fit to do so, the city commission being the body vested with the power of appropriating city funds. The Board of Revenue of the County of Jefferson has a like authority to appropriate such sum to the benefit of this National Guard Squadron as the Board of Revenue is vested with the power of appropriating the funds of Jefferson County to the purposes permitted by law. It is possible therefore, for the city and the county to legally take the action suggested.

The State is in a different position. The Legislature is the only body authorized to appropriate State funds and the Constitution of this State prevents the payment of funds except upon an appropriation made by the Legislature. There is, therefore, no authority vested in the Governor or any other arm of the State except the Legislature to order or authorize a warrant drawn on the State Treasurer for $200.74 for the benefit of the 106th Observation Squadron, Alabama National Guard.

I regret very much to reach this conclusion but it is inescapable.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 8, 1924.

Mrs. E. M. Widdifield,
Clerk and Register,
Domestic Relations Court,
Birmingham, Ala.

My Dear Mrs. Widdifield:

Your letter of the 29th ult. requesting an opinion from this office has been by the Attorney General referred to me for reply.

I shall answer your first and second questions together. You ask whether or not a Judge of the Domestic Relations court can order that no costs be taxed except the solicitor's fee or that part of the costs and part of the solicitor's fee be taxed.

I am of the opinion that the provision of Section 11 of the Acts of 1919, page 619, gives the judge authority to order the taxation of all or any part of the costs and all or any part of the solicitor's fees; that the judge may order the taxation of no costs and all solicitor's fees or no costs or part of costs and part of the solicitor's fees.

Your third question is not entirely clear. It is stated as follows:

> "If the judge of said court orders a part of the regular circuit court cost taxed in any cause under section eleven of said act, is it or not mandatory upon the clerk under section nine to tax the full $25.00 solicitor's fee in addition to the other costs?"

As I understand this question you want to know whether or not an order that some part of the costs shall be taxed would include the solicitor's fee.

The word "costs" includes all fees taxable in the case. "Costs" is defined by Cyc. as the "expenses incurred" in the case. The term is used synonymously with "fees" in Sec. 6646 of the Code providing how fees shall be taxed and paid.

Sec. 9 of the Act above referred to provides that a solicitor's fee of $25.00 shall be taxed in a cause in which the solicitor appears and in which the judge orders the taxation of costs in accordance with the provisions of this Act.

The solicitor's fee should therefore be added as costs unless the judge expressly orders that no solicitor's fee be taxed. In

other words, if the order is that half of the costs should be taxed the solicitor's fee should be added as part of the costs before computing the part to be taxed.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

March 15, 1924.

Hon. William R. Roundtree, Jr.,
Selma, Alabama.

Dear Sir:

Replying to your letter of the 11th instant to the Attorney General I am of the opinion that the office of the Judge of "The Court of Common Pleas of Selma" is not the same as that of Justice of the Peace within the meaning of Section 280 of the Constitution of 1901.

The Act of 1923 (Local Acts p. 68) prescribed one of the qualifications of the Judge as that he shall have been admitted to the practice of law within the State of Alabama. No such qualification is required of Justice of the Peace. This is an inferior court established by the Legislature by virtue of Section 168 of the Constitution of 1901, in lieu of all Justices of the Peace and notaries public with power of Justice of the Peace in precinct Number 36 in Dallas County. While the Court is an inferior court established in lieu of Justices of the Peace, and has the jurisdiction conferred by said act within the Constitutional limitations, the Judge, as the Judicial officer thereof, is not a justice of the peace. The office of Judge is a judicial office of limited jurisdiction.

Section 280 of the Constitution forbids one person from holding two offices of profit within this State, and excepts Justices of the Peace, but does not except from the operation of the Constitutional provision judges of courts established in lieu of Justices of the Peace.

State ex rel Griswold v. Lea, 99 Sou. 170

Another reason why a member of the State Legislature could not hold the additional office of judge of said court, is because the two offices are incompatible, one belonging to the judiciary and the other to the legislative. This is contrary to sections 42 and 43 of the Constitution of 1901.

In the case of Scott v. Strobach, 49 Ala. 477, the decision of the court was to the effect an officer cannot hold two incompatible offices at one and the same time. The opinion of Justice Brickell was concurred in by JJ. Saffold and Peters on this point, but both judges dissented as to the acceptance of an incompatible office, by one who then holds an office, ipso facto, vacating the first office, and reserving opinion as to the eligibility to office of one who is not a qualified elector.

However, in the case of Shepherd v. Sartain, 185 Ala. 439, the court follows the opinion of Justice Brickell in the Strobach case that the acceptance of a second office of the kind prohibited operates, ipso facto, as a vacation of the first office. The decisions of the Alabama Courts are clear that an officer is not precluded from being elected to an incompatible office, while holding an office, but that he is precluded from holding both at one and the same time, and that the acceptance of the second office vacates the first office, is equally clear.

See Shepherd v. Sartain, supra,
Mann v. Darden et al., 171 Ala. 142,
Ward et al. v. State ex rel. Goldsmith, 203 Ala. 306.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 18, 1924.

Hon. Frank N. Julian,
Commissioner of Insurance,
Montgomery, Ala.

Dear Sir:

In your letter of the 13th instant, the following statement of facts is given, to-wit:

The Bureau of Insurance recently made an examination of a domestic life insurance company as required by section 10 of the Act approved September 25th, 1915 (Acts 1915, p. 834; *Insurance Laws of Alabama,* 1922, p. 8, sec. 10). During the same year the Bureau of Insurance as is required to be done annually, valued the registered policies of this insurance company as required by section 3 of the Act approved August 17, 1909, (Acts 1909, p. 3; *Insurance Laws of Alabama,* p. 31, sec. 58). It is contended by the insurance company that the expense incurred in valuing the registered policies of the company should be borne by the State, inasmuch as such valuation of policies was made during the year of an examination under section 10 of 1915 Act. Is the State chargeable with this expense?

The examination required by section 10 of said 1915 Act, supra, is for the protection and benefit of the policy holders. In part that section provides as follows:

> "At least once in every two years the insurance commissioner shall personally, or by his deputy, or some competent person appointed by him for that purpose, visit each domestic insurance company and examine its affairs, especially as to to its financial condition and ability to fulfill its obligations, and whether it has complied with the law."

Section 11 of this Act provides, as to the payment of the expenses of the examination required by the provision quoted, that the insurance commissioner shall designate a qualified actuary to make the examination, "and shall fix a reasonable compensation to be approved by the Governor for such actuary ... upon a per diem basis to be paid by warrant of the State Auditor drawn upon the State Treasury. Hotel bills and traveling expenses actually incurred in connection with such examination shall, upon proper vouchers therefor, be paid by the State on condition that the same shall have previously been charged to such insurance company and by it paid to the insurance department."

It is certain that the expenses of the examination required by Section 10 of the Act approved Sept. 25, 1915, except hotel bills and traveling expenses, are payable by the State.

The issuing of registered policies is not compulsory on an insurance company. The law provides that such companies "may

issue policies of insurance or endowment having on their face a certificate" which shows registration and deposit of securities guaranteeing it (Section 2, Acts 1909, p. 3). This act requires the insurance commissioner "On the first day of January in each year, or within sixty days thereafter . . . to cause the registered policies of each company to be carefully valued . . . and the actual value thereof, less such liens or charges, not exceeding such value, as the company may have against them, shall be entered upon the register opposite the record of each policy," etc.

Section 11 of this Act provides:

> "Any expense incident to the carrying out of the provisions of this article shall be borne by the company governed thereby."
>
> *Insurance Laws of Alabama, 1922, p. 34, section 66.*

This registration of policies and valuation thereof is optional with the insurance company, is for its special benefit and is to be done entirely at its expense.

Under the provision of the law the examination of an insurance company under section 10 of the 1915 Act (supra) to ascertain its financial ability to fulfill its obligations and whether it has complied with the law, is distinct and separate from the valuation of registered policies for which provision is made by the Act approved August 17, 1909, supra. The objects to be accomplished are entirely different.

The Bureau of Insurance advises this office that in practice the execution of the provisions relative to the matters is separate and distinct. It follows that no expense incurred exclusively for the purpose of valuing registered policies can be charged to the State.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 31, 1924.

Hon. John H. Drakeford, Chairman,
Macon County Board of Revenue,
Tuskegee, Alabama.

Dear Sir:

In compliance with your request to the Attorney General, in which you desire to know whether or not the Board of Revenue of Macon County can expend any portion of its road fund for the purpose of working the streets of the town of Tuskegee, I beg to advise you that I find the law relating to your question to be as follows:

No part of the special tax levied on real and personal property and collected by virtue of Section 215 of the Constitution of 1901, can be used for any other purpose than for which the same was levied and collected. As a special tax, under said section is for the purpose of paying debts or liabilities incurred by the county for the erection, construction or maintenance of the necessary public buildings, bridges or roads of the county, the same may not be used for the purpose of working the streets of the municipality.

Town of Clanton v. Chilton Co. 87 So. 343

A use of any of the road funds of the county for the purpose of working the streets of the town, in my opinion, is contrary to the purpose of the law. But, in this connection, I should call your attention to a distinction between a street of a city or town and a public road of the county within or through a city or town.

Under the Act of 1915, p. 573, section 13½ reads as follows:

"The court of county commissioners or like governing body of any county, with the consent or permission of the city council or governing body of any municipality may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality."

The minutes of the county Board of Revenue should disclose whether or not the highway which it has been proposed to work is a street of the town of Tuskegee or is a public road of the county.

If a street of a town or city is taken over by the county as part of its public road system, with the consent or permission of

the city council, or governing body of the town, then as part of the system of public roads of the county, the county has the right and authority by law to maintain the same.

The above statement is sustained by the following decisions:

Ryan, Treas. v. Goodrich & Crinkley, 75 So. 17

State, ex rel. City of Birmingham v. Board of Revenue of Jefferson County 78 So. 964

City of Birmingham v. Carlson, 96 So. 333

Hoping the foregoing gives you the desired information, I am

Very truly yours,
O. B. CORNELIUS,
Assistant Attorney General.

April 1, 1924.

Mrs. Ophelia L. Arrighi,
Parole Officer,
State Training School for Girls,
Birmingham, Ala.

Dear Madam:

Your letter of recent date addressed to the Attorney General has been referred to me for reply. You ask if your institution has authority to detain a girl after she becomes twenty-one years of age.

Under the Acts of 1911, p. 396, a girl must be dismissed from the institution when she arrives at the age of twenty-one unless she has been convicted and sentenced to serve in such institution for a period which extends beyond her arrival at the age of twenty-one, or unless she remains voluntarily, in which case the institution may keep her until she is twenty-five or slightly over. Acts 1911, p. 396, Secs. 8, 9 and 10.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

April 2. 1924.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of March 31st addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You make three separate inquiries in this letter.

1st. You make the following statement and inquiry:

"Some time ago the Alabama Power Company filed a number of deeds somewhat in the nature of options; part of the purchase price was paid with the provision that when the balance was paid title was to pass in full. Deed tax on the full purchase price was paid at that time. They are now filing separate instruments, warranty deeds to the same property. Must we collect tax on those last instruments?"

In reply to this inquiry will say that the first papers mentioned as having already been filed, and a deed filing tax paid, I judge from what you say, were conditional sales contracts of real estate, not deeds at all. If I am correct in this conclusion, as to the nature of the papers first filed, there should have been a mortgage filing tax collected, measured by the deferred payments contracted to be made. There should have been no deed filing tax collected thereon, since such a paper could not operate as a conveyance of real property. A deed was necessary, after the full payment of the deferred payments, in order to convey the title. Such a contract being a conditional sale contract, a mortgage filing tax is required by section 4½ of the House Bill 294 (Acts 1923, p. 156, *et seq.*) measured by the amount of the deferred payments.

When the deeds conveying the title are subsequently presented for filing for record, deed filing tax, measured by the value of the property conveyed should be paid. The payment of the mortgage filing tax upon the first batch of conditional sales contracts could not affect the deed filing tax due upon the deeds subsequently executed and offered for filing for record.

2nd. You inquire if "when a paper is filed to correct an error in a previous conveyance and a deed filing tax was paid on

the original conveyance, must we collect again on the instrument filed to correct?"

In answer to this inquiry will say that I find no exception in the law in favor of deeds filed, which were executed to correct another deed. Unless such a deed conveys property, it does not correct the former deed. For the purpose of fixing the deed filing tax you must presume that every warranty deed, whether statutory or common law warranty, conveys the property which it purports to convey. In the case of a quit claim deed, which does not purport to convey any special interest in property, the one offering such deed for record must inform you what the deed does convey. It must be presumed to convey some interest in real or personal, or else it is not entitled to record.

3. You state the following:

"Tallassee Motor Company requests me to ask information on the following condition: they have quite a number of cars bought soon after October 1st, second hand. They failed to get transferred title certificates. They are unable to get in touch with the parties they purchased from. Will they be allowed to get title certificate for the party they bought from and then for themselves so they may clear the title and dispose of these cars?"

In answer to this inquiry, will say yes, if such dealer can satisfy you of his title.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

April 3, 1924.

Hon. Homer Dudley,
Judge of Probate,
Seale, Alabama.

Dear Sir:

Sometime since the Columbus Coca-Cola Bottling Company wrote this office stating that it had taken out a state and county license in Lee County to sell soft drinks, at wholesale, and had sent check to you for county license, but not for state license, and that you refused to accept it. I am writing this to try to get this

matter clear before the minds of all concerned and will send copy to Judge Butler and to Columbus Coca-Cola Bottling Company, as well as to you. You were, in my opinion, entirely correct in refusing to accept money for the county's part without payment of the state's part.

The license schedule 96½ of Section 361 of the Revenue Act, 1919, has reference only to the state's part of the license money. In order to understand the question involved three matters must be considered together: 1st, said schedule 96½; 2nd, section 362 of said Revenue Act; and 3rd, section 363 of said Revenue Act.

I will here copy said schedule and each of said sections, so far as they affect the question under consideration.

> "Schedule 96½. *Wholesale Soft Drinks.*—Each person . . . engaged in the business of selling, at wholesale, non-alcoholic, carbonated or other soft drinks, shall pay an annual license of fifty dollars."

The foregoing amount of fifty dollars goes to the state.

> "Section 362. There is also hereby levied for the use of each county in the state a license or privilege tax upon each person, firm, or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the state, of fifty per cent of the state license or privilege tax, except as herein otherwise provided."

The above, of course, has reference to the money going to the county, which, in the case under consideration is fifty per cent of the state's license provided for in said schedule 96½. The state's part in said schedule is $50.00; therefore, the county's part is $25.00.

We now come to the consideration of when a State license must be paid and when a county license must be paid. In order to ascertain this, we must consider section 363 of said Revenue Act. This section, so far as it affects the question, is as follows:

"Section 363. Before any person, firm, or corporation shall engage in or carry on any business or do any act, for which a license by law is required, he, they, or it, except as otherwise provided, shall pay to the Judge of Probate of the County in which it is proposed to engage in or carry on such business or do such act, the amount required for such license, and shall comply with all the other requirements of this act; and upon the payment of such amount and a fee of fifty cents to the Probate Judge for the issuance of such license, and all costs and penalties which shall have accrued, or for which such person, firm, or corporation shall have become liable in any proceeding commenced for the collection of such licenses, or to enforce payment thereof, and upon compliance with all the provisions of this Act by the applicant, such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the state auditor, which shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, *the name of the street or location where it is proposed to carry on the same,* if such location shall be in a city or town and have a street number, and if not, then the *location* and amount paid for such license, and the time for which it is issued; . . . and such license shall not be transferrable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, *nor at any other location than that therein specified.* Provided, that in case it should become necessary *to remove any business for which a license is required by this section from one location to another location in the same city or town and such business be continued as the same kind and character and by the same person or firm as that carried on at the former location,* another license shall not be required for such business for the same license year."

It is perfectly plain from the foregoing section that a different license is required at every location where such soft drinks are sold; that they cannot be sold except at a location named and described in the license. Still more does it appear that a probate judge in one county cannot issue a license to sell such drinks at

wholesale in another county. It will be noted that at the beginning of said section 363 it is said "Before any person, firm or corporation shall engage in or carry on any business or do any act for which a license by law is required, he, they, or it, *except as otherwise provided,* shall pay to the judge of probate of *the county in which it is proposed to engage in or carry on such business or do such act, etc.* It clearly appears that the judge of probate of one county cannot issue a license to one proposing to engage or carry on business in another county, except in cases so provided by law, and there is no such provision in the law as to license to sell soft drinks. This license falls under the general statement made, and it is not 'otherwise provided by law'."

Strictly speaking, it is not legal to haul soft drinks from place to place and sell them, but it has been the custom of the administrative branch of the state government to permit it within the county where the license is issued, as a kind of necessity in such business; but, at no time has this practice been sanctioned by the State Tax Commission outside of the county in which a state and county license is issued. The license form prescribed by the auditor has the word "at" with a blank space thereafter for the designation of the place to be used for selling. We notice that in the two licenses sent us by the Columbus Coca-Cola Company, issued by the Judge of Probate of Lee County, one for 1922 and the other for 1923—the blank space after said word "at" is filled in, for 1922, so as to read, "at Lee County, Alabama," and, for 1923, it is filled in so as to read "at Columbus, Georgia." I merely mention this to show the difficulty of filling the blank with the construction attempted to be given the law. The blank is correctly drawn, in strict accordance with requirements of said section 363 of the Revenue Act of 1919, which is still the law on the subject. The jurisdiction of the judge of probate of a county in this state, in this matter, does not extend to the state of Georgia, nor to a county in this state, other than his own county. As already said, strictly speaking, the blank after the word "at" should be filled in so as to designate the particular place in the county where such business might be carried on under the license so issued. It is a most liberal construction, based largely upon the necessities of such business and on former administrative practice

with reference thereto, which allows such business to be carried on all over the county in which the license is issued.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 7, 1924.

Hon. I. T. Quinn,
Commissioner of Conservation,
Capitol,

Dear Sir:

The Attorney General has referred to me your written request for an opinion.

You ask whether or not section 10 of the Act of the Legislature approved September 29, 1923, entitled, "An Act, To provide for the construction and operation of fish cultural stations in the State of Alabama; to provide for the acquisition of suitable areas in the name of the State; to provide for the administration and management of the fish cultural stations; to provide for payment of employees; to provide for a fishing license, and for other purposes," applies to bass, bream, and fresh water trout taken from the fresh waters of the State other than those taken from fish cultural stations of the State of Alabama.

Section 10 of the Act in question reads as follows:

"Sec. 10. That in order to better conserve and protect the fish in the fresh waters of this State, it is hereby declared a violation of law and shall constitute a misdemeanor to take, catch, kill or be in possession of any bass, trout or bream, from the fresh waters of this State, from the 1st day of April to June 1st, following, in each year."

The title of the Act makes no mention of any subject which could reasonably be construed as giving notice of the intention of the legislature to prohibit one from taking, catching, killing, or being in possession of bass, trout, or bream taken from the fresh waters of the State. That part of the title, *"and for other purposes,"* is not sufficiently clearly expressed in its title to embrace the catching, killing, or being in possession of bass, bream or trout

taken from the fresh waters of the State, unless by a reasonable construction, it can be said that the title contemplated a regulation of the time for fishing for trout, bream or bass in the fresh waters of the State, then the legislature was without authority in view of the express provision of section 45 of the Constitution, to incorporate section 10 into the act.

In the case of *Sanders v. Court of County Commissioners of Elmore County,* 117 Ala. 543, the Supreme Court held that under the title of an Act entitled "An Act to regulate the fine and forfeiture fund of Elmore County, and to better provide for the payment of claims against the same," the title was not sufficiently broad to embrace a provision in the Act which required the commissioners court to appropriate funds out of the general funds of the county to the fine and forfeiture fund. Also see *Pierce v. Court of County Commissioners of Elmore Co.,* 117 Ala. 569.

In the case of *Bell v. State,* 116 Ala. 87, the court said: "The subject to be contained in a bill may be as broad and comprehensive as the legislature may choose to make it. It may include innumerable minor subjects, provided all those minor subjects are capable of being so combined as to form only one grand and comprehensive subject."

In that case the court held that the title of the act, "An Act to establish a new charter for the city of Huntsville," did not comprehend a provision in the act forbidding the prosecution on affidavit before a justice of the peace of a person who had been arraigned before the mayor.

As said in *ex parte Pollard,* 40 Ala. 77-98, followed in *State, ex rel, Winter v. Sayre,* 118 Ala. 1, "The particular subject selected by the legislature and put in the title must embrace every part of the law. The question must always be, whether taking from the title the subject, we can find anything in the bill which cannot be referred to that subject. If we do, the law embraces a subject not described in the title, but this conclusion should never be attained, except by argument characterized by liberality of construction and freedom from all nice verbal criticism."

Construing this section 10 in the act by these general rules of construction, I am of the opinion there is nothing in the title of the act which will include section 10, and authorize a construction which will permit an application of the same to the fresh waters of the State not in fish cultural stations.

Therefore, I am of the opinion that section 10 does not apply to bass, bream and fresh water trout taken from the fresh waters of the State other than the fresh waters of the State cultural stations.

Hoping what is said fully answers your inquiry, I am,

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

April 9, 1924.

Hon. Roy Nolan, Associate Member,
State Board of Administration,
Capitol.

Dear Sir:

The following question has been referred to me for an opinion as follows:

> "Roy Elliott was convicted for grand larceny in the circuit court of Walker County, and sentenced on the 22nd day of February, 1922, to imprisonment in the penitentiary from eighteen months to eighteen months and ten days. On the same date he was convicted in the second case of grand larceny and sentenced from eighteen months to eighteen months and ten days, said second sentence to begin with and to end with the sentence imposed in the former case.
>
> "QUERY: Should the defendant be released upon the service of eighteen months and ten days under this sentence of the court, or will the statute make the second sentence begin at the expiration of the first sentence, the second sentence being for a definite period of time? In the event the prisoner is released at the end of the service of eighteen months and ten days, will the state be liable for the costs in the second case?"

The first question arising in the determination of this question is, since the court, in pronouncement of the sentence of the court on the defendant specified that the second sentence is to begin with and to end with the sentence imposed in the former

case, what effect, if any, did this have upon the second sentence? Secondly, did the court have authority to so specify in the sentence, and, if not, how should the same be treated?

"By common law cumulative fines and terms of imprisonment if definite and certain are valid where accused is convicted of separate and distinct crimes in different indictments or in different counts of the same idictment." *16 C. J. p. 1370,* Sec. 3224.

"In those jurisdictions where cumulative sentences are permissible, a judgment on a conviction of two or more offenses, involving imprisonment for two or more terms in succession should not fix the date on which each term shall begin, but should direct it to commence at the expiration of the term prior thereto, which may be shortened by good conduct or otherwise.

"This is not required, however, where the statute expressly provides that the successive terms shall begin at the expiration of the one that precedes. It cannot be urged against a sentence of this kind that it is void for uncertainty, since it is as certain as the nature of the matter will permit. It may be uncertain when it is imposed, but it will be made certain by the event, for, if the prior imprisonment is shortened by a reversal or pardon, the sentence of subsequent punishment then takes effect in the same mode as if the prior term had expired by the natural lapse of time. And it has been held that it is not uncertain because convicts who are chargable with no misconduct are entitled to a good term credit on their sentence." . . . .

"Where defendant is found guilty of more than one offense, if the court desires to have imprisonment under one sentence commence on the expiration of another, the sentence must so state, or else the two terms of imprisonment will run concurrently and defendant will be entitled to his discharge at the expiration of the longest term. This rule does not apply, however, where different sentences are imposed by different courts or where the statute provides that cumulative sentences shall operate consecutively." *16 C. J.* p. 1306, Sec. 3082.

"A defendant is not prejudiced and, therefore, cannot complain that the court erroneously directed that the sentences on each count should run concurrently instead of consecutively, where the punishment assessed is that allowed for the offense of which he was convicted." 16 C. J. p. 1282, Sec. 3032.

The above are rules appearing as general propositions sustained by decisions of some of the courts of the states.

The statute, Section 6519 of the Code of 1907, expressly provides that, "When a convict is sentenced to imprisonment in the penitentiary on two or more convictions, the imprisonment on the second, and on each subsequent conviction, must commence at the expiration of the imprisonment on the preceding conviction."

In the case of *Ellis v. State,* 11 Ala. App. 300, the trial court sentenced the defendant, in a case for having violated the prohibition law, to perform hard labor for the county for 30 days to pay the fine and an additional term of 57 days, at the rate of seventy-five cents per day, for the payment of the costs. At the end of the sentence for hard labor for the payment of the costs, and immediately following the stated amount of costs, the court added the following words: "And the said hard labor to end and terminate on the 27th day of November, 1914."

The court of this said:

"These words are not necessary to the regularity and validity of the sentence, and the statute does not contemplate that the court shall fix the date on which the sentence shall end. Therefore, these words can and should be treated as surplusage."

In *Chaney v. State,* Ala. App. 45, the Court said:

"That part of the judgment entry specifying the day of the month and the year upon which the sentence should commence and expire is surplusage, and as it is inappropriate as applied to the changed conditions as to time, due to the suspension of the sentence pending an appeal, the same is stricken."

In the case of *Fuller v. State,* 97 Ala. 27, the defendant was convicted in three cases and sentenced to hard labor for the county. The objection was made that the court did not order that the labor for the county should commence on the termination of the punishment for the preceding conviction. The court said: "We think there is nothing in this objection, ... The statute itself declares the order in which the several sentences shall commence and be operative."

In the case of *Brown v. State,* 47 Ala. 47, the court said:

"The court can impose only such penalty as the law sanctions. It cannot impose a sentence of greater or less severity than that commanded by the law. In such a case, the question is not one

of injury or favor to the accused, but one of legal authority. The court can only do what the law commands. Its judgment is a declaration of the law."

In view of the light of the above and foregoing authorities, I am of the opinion that inasmuch as the law fixes the order in which the two simultaneous sentences of the court shall be carried out; that, inasmuch as there is no authority of law for the trial judge to pardon, commute, or indefinitely suspend the execution of a sentence lawfully imposed by the court, that the court was without authority of law to make an order that the second sentence was to begin and to end with the sentence in the former case.

I am further of the opinion, that, if the second sentence imposed by the court on the defendant is valid other than for the use of the words attempting to fix the time of the beginning and ending of the sentence, that the said words do not detract from the validity of the sentence imposed on the defendant, and the same have no binding force, and legally amount to no more than surplusage.

I am also of the opinion that the indeterminate sentence being definite and certain as could be, dependent on the good behavior of the prisoner, and the will of the pardoning board, the time of the beginning of the second sentence is also reasonably certain and sufficiently definite.

In the event the prisoner is released at the end of the service of the first sentence, the state is liable for the costs in the second case.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

April 14, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your inquiry of today states the following case: A warrant is sent to the probate judge April 1, 1924, as quarterly payment to

a pensioner. The pensioner dies April 3rd, 1924, prior to the delivery of the warrant. Such pensioner leaves no widow or minor children. Query: Has the probate judge authority to deliver the pensioner's warrant to the administrator of the pensioner's estate?

Section 18 of the act regulating the payment of pensions (Acts 1919 p. 539) requires the probate judge to deliver the pension warrant to the payees, having them to sign a receipt therefor or in the event the pensioner is physically unable to appear before the judge of probate, delivery is permitted to be made to a reliable citizen of the county in which the pensioner resides, on the written request of said pensioner and *on the affidavit of such citizen that the pensioner is at the time of such delivery of warrant actually living in the county and is physically unable to appear in person before such probate judge."*

It is also provided in this section that in the event the warrant is not delivered within thirty days that it would be returned and indorsed by the auditor "canceled" on the face thereof. The last sentence in this section provides:

"Each warrant before being paid must bear the indorsement of the payee attached by some witness in writing and where payee is unable to write such indorsement shall be attested by two witnesses in writing."

Section 28 of this act provides for the payment of a warrant not delivered to the pensioner during his life time where he leaves a widow or minor children. Such payment is made either to the widow or to the minor children of the deceased pensioner.

It will be noted that if the pension warrant is not delivered personally to the pensioner that an affidavit must be made that the pensioner is at the time of the delivery of the warrant actually living in the county. It would be impossible to make such an affidavit after the death of the pensioner.

Section 28 to which attention has been called, deals with the delivery of the warrant in the event of the death of the pensioner. The legislature having directed its attention to providing for the delivery of a warrant in the event of death of a pensioner, will be presumed to have provided for every instance in which it intended a delivery after the death of a pensioner.

There is no provision for the delivery of such a warrant to the estate of the deceased.

I am of the opinion that the undelivered warrant to the pensioner cannot be paid to the pensioner's estate, and can be delivered and used only in such cases specifically provided for in Section 28 of the act.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

April 18, 1924.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

Your letter of April 9th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "I will thank you to advise me whether a candidate for election to the office of county superintendent of education of Marion County, Alabama, under the provisions of a local act approved September 24, 1923, is required to qualify as such candidate by filing an affidavit with the Judge of Probate that he possesses the qualifications prescribed for such office in an act approved October 1, 1923. (See General Acts 1923, page 748)."

In reply will say that it is my opinion that no name can legally be placed upon a ticket for nomination for county superintendent of education who is not eligible. To be eligible he must hold an Alabama certificate in administration and supervision based as a minimum upon graduation from a standard normal school or equivalent education with at least one year of additional study of college grade and proof of three years of successful teaching experience. (Local Acts 1923, page 241.) The method of ascertaining such qualifications of any person before placing his name

upon a ticket to be voted on for superintendent of education is not provided for by this local Act; but it is provided for by a General Act (General Acts 1923, page 749) and is as follows:

> "Such person shall make affidavit that he or she has and possesses the qualifications prescribed in Section 1 of this act; which said affidavit shall be filed with the judge of probate of the county where he or she seeks the office of county superintendent of education, and the same shall be recorded in a permanent record kept for that purpose."

The qualifications required by section 1 of said General Act are the same as required by said local act. The local act in question was approved September 24, 1923, and said General Act was approved October 1, 1923. Said General Act was intended to apply to all counties so far as the said provision is concerned regardless of local laws previously enacted, as shown by section 4 of said General Act, which reads as follows:

> "Section 4. All laws and parts of laws, general, special or local, in conflict herewith be and the same are hereby repealed."

If said local law is in conflict with said provision in the general law, the local law was repealed by the general law. We are of opinion that no conflict exists in this case. No method of ascertaining eligibility of the candidates was provided in said local act, and, therefore, the general law providing a method of ascertaining such eligibility does not conflict with any provision of said local act, but simply adds this to the law of Marion County.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

April 18, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I am in receipt of your recent request for an opinion from this department relative to certain acts of the Legislature providing and regulating the salaries or compensation of certain county officers of Montgomery County.

By constitutional amendment, Amendment IV to the Const. of 1901, it is provided that the Legislature may from time to time by local or general laws, fix, regulate and alter the amount of the above named salaries and allowances, including the method and basis of their compensation, also fix, regulate and alter amount of compensation received by all other county officers of Montgomery County.

In the case of Jones v. McDade, 75 So. 988, this amendment to the constitution was sustained.

The questions on which you desire an opinion relate to those certain sections and parts allowing a certain sum for all other expenses and ex-officio services.

In the Act of 1919, page 842, the Judge of Probate, in addition to a salary of $5,000 per annum set, and an allowance of $7,800 for office help, specifying the clerks, and their salaries, is found in the following provision: "And twelve hundred dollars per annum for all other expenses, including extra clerks and ex-officio services of the Judge of Probate. The said twelve hundred dollars to be paid to the Judge of Probate in monthly installments, and disbursed by him." Ex-officio services are those which the law annexes to a particular office, and requires the incumbent to perform without providing specific or precise compensation therefor.

City of Birmingham v. Hawkins, 94 So. 62.

In case of Macon County v. Abercrombie, 184 Ala. 283, Justice DeGraffenreid, states the following: "A painstaking examination of the history of our statues governing the subject of compensation to public officials convinces us that it has been the policy of our lawmakers to fix the precise amount of each fee to which

an officer is entitled unless that fee is, in reality, an allowance for mere ex-officio services, or services which the law annexes to a particular office and requires the incumbent of that office to perform. Our lawmakers have as a general rule, fixed a definite fee for every specified, well defined duty required of an officer, leaving only under certain fixed limitations a discretion in the county commissioners as to what shall be paid to an incumbent of an office for mere ex-officio services which the law has attached to his office. The law has not, at times, defined with chiseled accuracy where the powers which come within the general and natural purview of an office and where the duties which as mere ex-officio duties are attached to such office begin."

Section 370 of the Code of 1907, provides that persons enentitled to an allowance by the court of county commissioners for what are commonly called ex-officio services, shall, before the allowance is made, itemize such services, and make oath thereto, as in the case of other claims against the county. The compensation allowed shall be the fair and reasonable value of the services. A maximum is provided.

In all the cases I find in which fees for ex-officio services are allowed to be paid from the county treasury, each one requires proof to be made to the Court of County Commissioners or other governing body for the county, before allowance of the same. But, in this instance there is no such provision of the law requiring this to be done. This act places the Judge of Probate on a salary of $5,000, provides for certain office help, and also makes an allowance to him of $1,000 per annum, payable in equal monthly installments, which sum is to be expended by him in meeting all other expenses, including any extra clerks, if any, and the balance, if any, is for any extra duties to be performed, incumbent on the office—and ex-officio allowance. The act provides that he shall disburse the same, meaning, that he shall pay out that part that is necessary in meeting all other expenses, not above enumerated, including extra clerk hire.

The Act of 1919, page 24, fixes the salary of the sheriff at $4,000 per annum. $5,700 is allowed to be paid to a clerk and three deputies. In addition to this, $1,000 is allowed and authorized to be paid for the sheriff, in monthly installments, for extra assistance in their said offices. There is no provision in this act

that any part of the same is payable to, or receivable by, the sheriff for ex-officio services rendered or performed by him but is expressly stated that it is payable for the sheriff for extra assistance. In other words, if the sheriff needs no extra assistance, other than the chief clerk and the three deputies no part of this allowance should be paid monthly from the county treasury, for such assistance.

Unless there is an express provision of the law allowing a fee, salary or allowance, none can be paid.

> Ex parte Mobile County, 200 Ala. 410;
> Herman v. Mobile Co. 202 Ala. 274.

By the latter provision of Section 1 of the Act of 1919, page 108 the tax assessor is allowed a sum not to exceed $300 per annum, to be used for contingencies, and to be paid out on warrant upon proper certificate of the tax assessor. No part of this allowance can be paid unless the contingency arises, the necessity for the payment. No part of this under the statute can be construed to mean that it is part of the salary or compensation of the Tax Assessor.

The act of 1919, page 263, after fixing the salaries of the tax collector and his chief clerk, provides as follows: "That there shall also be allowed a sum not to exceed one thousand dollars per annum to be used for contingencies and to be paid out on warrant upon proper certificate of the tax collector."

What is said immediately above as to the provision regarding the office of tax assessor, is applicable to this provision.

The act of 1920, page 21, contains a provision, relative to the judge of probate, similar to the act of 1919, and what is said above relative to the 1919 act also applies to the 1920 act. The 1920 act places the sheriff on the same footing with the judge of probate, by expressly providing that the sheriff shall receive one thousand dollars per annum for other expenses and ex-officio services of the said sheriff and what has been said as the allowance to the judge of probate also applies to this provision of the law.

In said act of 1920 no change was made as to the provisions relative to the tax collector and tax assessors, but the same provisions as prevailed in the 1919 acts were carried into the 1920 act.

The act of 1923, page 89, increased the salary of the judge of probate to $6,000 per annum, and still allows the sum of $1,000 per annum for other expenses and ex-officio services of said judge. The expenses contemplated are all expenses other than regular clerk hire attached to said office and which would necessarily have to be paid before pay for ex-officio services are receivable by the judge of probate. What has been said herein is applicable to this act, with the exception that section 5 of the act limits all payments to an amount not to exceed the fees, charges and commissions earned, collected and paid into the county treasury by the judge of probate. This act was approved July 31, 1923. On October 1, 1923, another act was approved dealing with the salaries of the county officers. (See page 767.)

In this act the judge of probate was allowed an annual salary of $6,000 in lieu of all other compensations, fees, or emoluments. In addition to an allowance, as specified in the act for regular clerks, the allowance was made of $1,200 per annum "for other expenses and contingencies."

In this act no reference is made to any ex-officio services nor allowance therefor, with the result that the general rules of law requiring a strict construction, and that no fee or allowance can be made except by a direct express enactment, no such allowance to the judge of probate for ex-officio services can be made. The other expenses and contingencies as mentioned in said act, in legislative contemplation, being only those pertaining to the office, and not including any extra services required by law to be performed by the judge of probate, and for which he is not allowed a salary. In other words, this act places the judge of probate on a direct salary of $6,000 per annum without any extra allowance. He is not entitled to any part of the $1,200 per annum.

The sheriff, by this act is allowed a salary of $4,000 per annum, and one thousand dollars per annum "for other expenses and ex-officio services of the said sheriff." What has heretofore been said as to the said expenses and ex-officio services is applicable to this act. The tax collector and the tax assessor were each allowed $1,000 per annum for other expenses and ex-officio services, of the said officers. The expenses which can be legally paid from this sum are the expenses of said offices, and officers, in the conduct of official duties. The increase in the salaries of

said officers are not applicable to the incumbents at the time of the passage of the act allowing increases.

Const. 1901, Sec. 68-281
Macon County v. Abercrombie, supra
Morgan County v. Fidelity & Deposit Co. 200 Ala. 690
Willett v. Weaver, 205 Ala. 268.

Ex-officio fees or allowances may be increased during the term of office.

Const. 1901, Sec. 68
Macon County v. Abercrombie, supra
City of Birmingham v. Hawkins, 94 So. 62.

Hoping the above fully answers your inquiries, I am,

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

April 30, 1924

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of April 21st, 1924, addressed to Hon Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know "if it would be legal to employ a chief clerk in the probate office who is under twenty-one years of age."

The chief clerk in a probate office in the State of Alabama is an officer. *Scruggs v. State,* 111 Ala. 60.

An officer in the State of Alabama must be a qualified elector, unless otherwise specially provided. Code 1907, Sec. 1467, sub-section 1.

A qualified elector must be twenty-one years of age. Code 1907, Sec. 290.

There is no exception in favor of the chief clerk of the probate office.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

May 2, 1924.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of April 11th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You propound the three following questions for reply:

1st. When a paper is filed transferring two mortgages in the same transfer should you collect a deed filing tax on the value of the two mortgage debts added together or should you collect on each separately?

2nd. After a mortgage is filed and recorded and later the mortgagee comes in and writes a transfer on margin of record, should deed filing tax be collected; if so, how are we to manage it?

3rd. If a party comes in for title certificate for second hand car, who has failed to secure transferred title certificate from his vendor, should we clear his title by allowing him to buy certificate for vendor and then for himself?

In answer to first question will say that the paper writing which transfers two mortgage debts is but one bill of sale and the filing tax is measured by the actual value of both debts added together.

In answer to second question will say that no person has the right to write transfers of mortgage upon the books kept in your office for the recording of instruments in writing as provided by law. You should not permit it in the first place, because your books of record should not be incumbered with writings not allowed by law. In the second place such a writing does not operate as notice to any one. Only such papers as are recorded, or such writing upon the record book as is authorized or required by law, can operate as notice. You might well ask what you should do if a person should execute a deed by writing it upon the records in your office. When you find such a writing upon the records of your office, you should erase it.

In answer to your third question will say that the statute does not permit such procedure, and section 4 of Act approved September 14, 1923, (Acts 1923, page 322) provides that the owner

of any motor vehicle who shall operate such motor vehicle in this state under a registration number of this state after October 1, 1923, without first securing a certificate of title as herein provided, shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one thousand dollars, and from and after October 1, 1923, any person who sells a motor vehicle, without complying with the requirements of section 3 hereof, shall be guilty of a misdemeanor and upon conviction shall be fined not more than $500.00 and may also be sentenced to hard labor for the county for not more than twelve months.

Section three above referred to requires the seller to transfer to the purchaser his title certificate and requires the purchaser, within ten days thereafter to present such transferred certificate to the probate judge, accompanied by a fee of one dollar and upon doing so requires the judge of probate to issue a new certificate. Such is the method required by section 3 for obtaining certificate of title to a second hand motor vehicle, purchased from a person in this state. The object of this is that title may be traced.

This act was not passed for securing revenue for the State but for the purpose of protecting the title to motor vehicles sold in the State. The fee charged will not, probably, pay more than the cost of administering the law.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General

May 3, 1924.

Hon. F. C. Marquis,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of April 8th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Please furnish this Department with a ruling as to whether or not a private tag issued in accordance with Section 12, Motor Vehicle License Schedule, can be transferred one time only, or

any number of times during the period for which such tag is issued. That is, A in buying a private tag, transfers same to B. Later B transfers same tag to C, etc. We understand of course that only private tags can be transferred from one private car to another where the horsepower is not of greater horsepower than the license tax was orginially for. In other words, how many times can a private tag be transferred?"

In answer will say that state and county licenses are not transferable except in cases specially so provided by statute and then only to the extent intended by the statute.

Section 12 of House Bill 321 (Acts 1923, p. 286), provides as follows:

"Persons paying an automobile license may have the same transferred to any other person, or to any other car, provided the same is not of a greater horsepower, by applying to the probate judge who issued the same, and it shall be his duty to make a record of the transfer which shall be in writing."

We are of opinion that it was the legislative intent that only the original purchaser of the license can have the same transferred. He may by bill of sale transfer it to a purchaser, or he may give it to another person in writing and have it transferred to such person; but such person to whom it is transferred cannot himself transfer it.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

May 16, 1924.

Hon. M. V. Henry,
County Treasurer,
Birmingham, Ala.

Dear Sir:

Replying to yours of the 7th instant asking whether or not you should pay a warrant drawn by the Board of Revenue of Jefferson County in favor of Neighborhood House.

Your inquiry sets out resolutions adopted by the Board of Revenue accepting the possession, control and management of Neighborhood House as a county poor house and states that this

property has been leased by the owners thereof to the Board of Revenue to be used as such county poor house.

The question of whether or not Neighborhood House is a county institution is a question of fact depending on whether or not it is being operated, managed and controlled by the county.

Section 1598 of the Code is as follows:

> "The Court of County Commissioners may purchase and hold lands and other property, proper for the erection and continuance of a poor house, and may, at their discretion, dispose of lands now or hereafter owned for such purpose, and make titles therefor, and may make all appropriations and orders proper for the erection and continuance of poor houses, and for the regulation and government of the poor and poor houses."

If Neighborhood House is being operated, controlled and managed by the county as a county poor house, I am of the opinion that under authority of an opinion rendered by the Attorney General reported in Biennial Report of the Attorney General for 1920-1922 on page 253 and the section of the Code above quoted, you should pay the warrant drawn by the Board of Revenue in favor of Neighborhood House.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 21, 1924.

Hon. Chas. E. McCall,
Examiner of Accounts,
Capitol,

Dear Sir:

This office is in receipt of your communication of recent date requesting an opinion on whether or not the sheriff of Cullman County is entitled to be paid his costs from the fine and forfeiture fund in a case where a husband is convicted by the probate judge for deserting or wilfully neglecting or refusing to provide for the support and maintenance of his wife, or minor

children under eighteen years of age, and after return of execution, "No Property Found."

By Act of 1919, p. 176, it is made a misdemeanor for a husband, without just cause, to desert or wilfully neglect or refuse to provide for the support and maintenance of his wife, or to provide for the support and maintenance of his child under the age of eighteen years.

By section 3 jurisdiction is conferred as follows:

"The probate courts of the several counties of the State shall have and exercise exclusive and original jurisdiction in all cases arising under this act, except in such counties in which by act of the legislature, juvenile courts have been created and established," in which counties the juvenile courts have exclusive jurisdiction. In Cullman County this jurisdiction is on the probate court. The last sentence of section 8 reads as follows: "There shall be no costs of any kind whatever taxed in cases arising under this act." This act was approved February 18, 1919. However, on page 544 of the Acts of 1919, is an act, approved September 24, 1919, reading as follows:

"That all officers serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees and compensation payable in the same manner and from the same source, as are now allowed and paid for like services with respect to process issued by the circuit courts, or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction."

The sheriff is an officer serving process, however, the probate court, while exercising jurisdiction in such cases is not a juvenile court. The act conferring jurisdiction in such cases on the probate court, does not term the probate court a juvenile court, but in each instance in the act the distinction between the two courts is preserved, the one being termed the "juvenile court," and the other the "probate court." Since the law of costs is penal and is strictly construed (1907 Code, Sec. 6631) the sheriff is not entitled to fees or costs in cases of a conviction in the probate court for a violation of the Act of 1919, p. 176, and which is the one allowing a conviction for desertion as aforesaid, even though it is a criminal case, and a conviction for a misdemeanor.

The Act of 1923, p. 296, relative to delinquent children, declares that the probate court, shall, in the exercise of the jurisdiction therein conferred by the act, be known as the juvenile court of.....county, however, that act does not apply to a prosecution such as the one you inquired about in your letter; yet, since, in your request, you inquire as to costs in "juvenile cases," I call attention to the above act of 1923, which names the probate court as a juvenile court while exercising the authority and jurisdiction over children; and, in those cases the act of 1919, p. 544, would govern as to costs of the sheriff. But as above intimated, no costs may be taxed in cases of conviction in the probate court of the husband, or parent, for desertion, as set forth in the act of 1919, p. 176.

The Local Act of Cullman County regulating payments of costs to the sheriff from the fine and forfeiture fund, or general fund, allows payment of the fees of the sheriff "in criminal cases where the State fails to convict," (Local Acts of 1915, p. 487, Sec. 8) and to fees of the sheriff in "all criminal cases in which execution has been returned, 'No Property Found'," and "in all criminal cases where the State failed, or fails to convict, or in which defendants have been convicted and have been proved insolvent by the return of execution, 'No Property Found,' or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant."

You will observe that since the Act of 1919 forbids the taxation of costs in a case of desertion and, since such cases are not excepted, by the Act of 1919, p. 544, when the prosecution is not in the juvenile court, but in the probate court, no execution could be issued, and no payment could be made from the fine and forfeiture fund, or general fund, of the County of Cullman, as the act allowing payment of the fees of the sheriff from the general funds of the county in criminal cases, describes the classes of criminal cases in which it may be paid, and none of the classes includes the case of desertion under discussion, and wherein, no costs may be taxed.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 21, 1924.

Hon. J. M. Moore,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir: .

You ask the Attorney General if the Commissioners Court or Board of Revenue may issue an interest bearing warrant in payment of salary of a county farm demonstration agent, where the county has insufficient funds to promptly pay the warrant.

The authority of the governing body of a county to issue interest bearing warrants is supported by several decisions of the court, among which is the following:

Marengo Co. v. Barley, 96 So. 754, and citations,
Alabama City, G. & A. Ry. Co. v. Gadsden, 64 So. 91.

But, as said in an opinion (Opinions of Atty. Gen. 1920-22, p. 116) "the agreement to pay interest must be supported by a valuable consideration." See citations in said opinion. But, in order for the county to legally contract for the payment of interest on the warrant, in addition to the consideration, it must be on an indebtedness wherein the county is legally authorized to contract for the payment of interest. See opinion cited.

The act allowing a county to make an appropriation for such purposes is found on page 35 of the Acts of 1911, and the sum appropriated is for aiding in farm demonstration on the organization of farm life clubs for the promotion of agriculture, and such sum or sums as the governing body of the county may deem adequate and necessary, not exceeding $1,000 per annum.

It is my opinion that the appropriation in contemplation of the Act, is not for the purpose of paying interest on the warrant issued for the salary due, but that the sum, not in excess of the amount authorized by law to be appropriated, is to be used for the purpose for which it is appropriated. If the entire appropriation is taken up by salary of the agents, then, the court is without authority by subterfuge of paying interest to increase the appropriation beyond the statutory limit.

Yours very truly, O. B. CORNELIUS,
Assistant Attorney General.

May 28, 1924.

Judge J. A. Carnley,
Elba, Alabama.

Dear Sir:

Replying to your very recent inquiry of the Attorney General, and which has been referred to me, as to whether the following quoted act is now in force and affect, I beg to advise you as below set forth.

The Act in question was approved February 8th, 1867, and reads as follows:

> "An Act to divide Coffee County into four commissioners districts.
>
> "Section 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the court of county commissioners of Coffee County, be, and are hereby authorized to divide Coffee County into four commissioners districts, from each of which hereafter, there shall be elected at every regular election, one commissioner, by the resident voters of the respective districts, and who shall be a resident of the district for which he may be elected, and further, if a vacancy should occur in any district, the court of county commissioners, shall order a special election to fill said vacancy."

Under said Act the Court of County Commissioners has twice acted, and divided Coffee County into four districts. The first time was on December 2, 1867, and the last division being made on May 1st, 1871. You ask if the last division on May 1st, 1871, was authorized by said Acts, and if the Court now has authority to divide the county into four districts.

This act until repealed is continuing in its field of operation, allowing the said court to divide the county into four commissioners districts, whenever said court in the discharge of its official duty sees fit to do so.

In arriving at this conclusion I am guided by the following principles of construction:

When a law is plain and unambiguous the legislature shall be held to have contemplated to mean what they have plainly expressed.

Bartlett & Waring v. Morris, 9 Port 266,

Contemporaneous construction and official usage for a long period of time are among the legitimate aids in the interpretation of statutes.

Wetmore v. State, 55 Ala. 198,

The authority "to divide" is plain, unambiguous, and the fact one division is made would not preclude another, as occasion to do so may arise. A similar quotation may be found under section 3313 of the Code of 1907. There the words used are:

"The Court has authority to levy a general tax."

This could not be construed to mean that as soon as one levy is made the court is powerless to make another levy.

The construction given this act by the county officials in 1871 was the same which I give. This has been acquiesced in by all officials of the county since then. Commissioners have been elected from the districts as established, and have held office without their right to do so being questioned.

This act has not been repealed by a special or local law, and I do not find a general law which has superseded this act in your county.

In the case of State ex rel. Tyson et al. v. Houghton et al., 142 Ala. 90, the court quotes approvingly the decision in Roberts v. Pippin, 75 Ala. 107, as follow:

"The court will not ordinarily declare a prior act to be repealed by a subsequent one in the absence of express words to repeal, unless the provisions of the two are directly repugnant, or, as frequently expressed, irreconcilably inconsistent."

"When both acts have the same scope it may be difficult to give both a field of operation but where as here although relating to the same subject matter, one is local in its operation and the other general, each having a distinct field of operation what might seem a conflict between the two, disappears in finding spheres for the operation of both. In such a case the latter general act does not repeal former local act unless repeal is necessary to give the words of the general act any meaning at all."

In the Tyson case cited the question before the Supreme Court was whether the Commissioners of the Board of Revenue of Montgomery County, who were elected in 1904 under the general election law, authorizing the election of the commissioners in each county of the state, were entitled to hold the office, or were the commissioners appointed by the Governor according to the local act approved February 28, 1903, entitled to hold the office. The court decided the local act was not repealed by the later general act.

In my opinion this decision is also decisive of the question as to the filling of a vacancy in the office of commissioner in your county. Your local act cited authorizes an election for the purpose of filling the vacancy. This not being repealed controls as against section 3307 of the Code of 1907, authorizing an appointment by the Governor to fill the vacancy.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

May 28, 1924.

Miss Mattie Dowling, Superintendent,
State Training School for Girls,
Birmingham, Alabama.

Dear Miss Dowling:

This will acknowledge receipt of your letter of the 27th instant requesting to be advised whether you, as Superintendent of the State Training School for Girls, have the legal right to take pregnant girls, who have been committed to the school.

Section 6 of the Act approved April 13, 1911, (Acts 1911, p. 395) provides:

> "That it shall be the duty of said board of managers in carrying out the purposes for which said home of refuge is established *so far as its available resources will allow,* to receive, care and provide for the welfare therein of all white delinquent females between the ages of twelve and twenty-five years, who by their course of conduct are likely to become

hurtful to the state or to the best interests of society, but *who may be benefited by said home and not the disturbers of its discipline* and who are to be committed to the keeping of said home."

This provision provides for the care of those who are committed to the keeping of the home and section 7 gives the description of those who may be committed by the circuit judge et als. It will be seen that it was intended by the Act for the Board of Managers of this institution to have an exercise of large discretion in the management of the home and in receiving, caring and providing for the welfare of those committed to its care. That this Board has considerable discretion is shown by those provisions of Section 6 which limits the duty to receive, care and provide for the welfare by the phrase "so far as its available resources will allow," and also by the phrase "who may be disturbers of its discipline."

These phrases indicate that the Board of Managers of the institution may in the exercise of their sound discretion refuse to receive those who will not be benefited by said home and who will be disturbers of its discipline and it also indicates that they are not supposed to do the impossible and accept inmates where the available resources of the institution are absolutely insufficient and inadequate to care for said persons.

However, admission to this institution of persons committed thereto by the proper officers cannot be arbitrarily refused and refusal for admission can perhaps be based only on the ground that the available resources are wholly inadequate to care and provide for such persons or that the parties refused would not be benefited by said home and would be disturbers of its discipline. The fact that a girl is pregnant would not of itself alone justify a refusal to admit her to the home if properly committed thereto.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 29, 1924.

Hon. Frank N. Julian,
Commissioner of Insurance,
Capitol.

Dear Sir:

You request advice from this office in the following statement of facts:

"On February 12, 1924, when the Insurance Department settled with the Hartford Live Stock Company for business transacted in the State for the year ending December 31, 1923, it owed said company a balance of $82.83 due said company as a refund on excess payment of premium taxes which has been previously made and issued therefor"—a credit memorandum.

You explained that the Hartford Live Stock Insurance Company was admitted to transact business in this State, making the deposit of $500.00 as required by the revenue laws of 1919; that when the annual taxes were payable, the company sent a check to cover same instead of allowing the $500.00 deposit to be credited to the payment of same; that the check was covered into the treasury; that in remitting to the insurance company the excess above the taxes due, only the difference in the amount of taxes due and the $500.00 deposit was remitted leaving a balance due the company, which has been credited to annual taxes due since that time. That there still remains a balance of $82.83 due said insurance company and the company is not renewing its license for this year.

You ask if the balance due this company may be credited at their request to premium tax due by the Hartford Fire Insurance Company, which company has same officers and directors as the Hartford Live Stock Company.

There is no provision of law whereby an overpayment of taxes may be credited to taxes due the succeeding year, and it has been held that in the absence of a statute, such a credit cannot be allowed.

The court in *Shelton v. Blount County,* 81 So. 562, quoting from 31 Am. Rep. 228, said:

"It is almost universally held that in an action for taxes set-off of an indebtedness of the State or municipality to the tax

debtor will not be allowed, ... nor is such a claim subject to compensation."

34 Cyc. 656-D reads as follows:

"Considerations of public policy require that a tax of one year should not be compensated by an overpayment of a previous year . . . . . Taxes are not such demands as admit of a plea in compensation."

Under the provisions of the General Revenue laws of 1919 (Acts 1919, schedule 59, p. 413) reading as follows:

"After the insurance company has been operating in this State for one complete calendar year they shall compute their business . . . . . and they shall be allowed credit for said sum of five hundred dollars deposited with the commissioner of insurance toward the payment of said taxes, and if the said five hundred dollars is more than the two years' taxes, the State Auditor is authorized to draw his warrant upon the State Treasurer in favor of said insurance company for such excess, upon a certificate from the commissioner of insurance," I am of the opinion that the balance now due the insurance company may be refunded by warrant of the State Auditor upon the State Treasurer upon the certificate of the Superintendent of Insurance, this being a balance which was by error not included in the refund made in accordance with the provisions of this schedule.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

June 4, 1924.

Mr. Donald Comer,
Birmingham, Ala.

Dear Sir:

The State Tax Commission has referred to me for reply your letter of May 30th addressed to it. You write as follows:

"Before definitely closing the St. Clair County matter I would like to talk with Judge Evans and have him explain to me the reason for his decision. What I mean is that we have had a valuation fixed in St. Clair County in a way that allowed

us no chance of appeal—fixed without our knowledge, and I want to discuss with the judge the question as to whether his decision was based on the fact that technically and legally we have lost our right of appeal or whether his decision that the tax as assessed is due by us is borne out by a valuation established by the facts in the case."

In reply will say that the only matter submitted to me was whether assessment as made in the case was a final adjudication of the matters involved therein. If it was, of course, it has long since been too late to take an appeal from the assessment as made.

After a reading of all the correspondence and statements made with reference thereto, it was my opinion that the assessment made was a final adjudication of the matters involved and that no fraud, either in fact or in law, had been practiced by the assessing authorities. Such being the case, I was and am of the opinion that the assessment then made cannot now be opened. Such was the opinion of the Supreme Court handed down in the case of *State v. Doster-Northington Drug Co.,* 196 Ala. 447, *et seq.* In commenting on the opinion in the above styled case in the case of *State Tax Commission v. Tennessee Coal, Iron & R. R. Co.* 206 Ala. 364, our Supreme Court said:

"In *State v. Doster-Northington Drug Co.,* this court had under review the power of the State Tax Commission to set aside an assessment of a tax payer and to revalue and reassess the property, and it was held that such a review must be sought within the period of the tax year, and that matured assessments were binding alike on the tax payer and the taxing authorities."

This same holding was again made in the case of *Wise v. State,* 208 Ala. 59.

Yours truly,
A. A. EVANS,
Assistant Attorney General.

June 4, 1924.

Hon. S. W. Welch,
State Health Officer,
Capitol,

Dear Sir:

In reply to your inquiry of May 24th, as to whether it will be legal under the Acts of 1919, amending section 712 of the Code of 1907, to pay a local registrar for the collection of statistics of births occuring prior to the approval of said Act, I beg to advise as follows:

No act may be given retroactive operation unless the intention be clearly expressed in the act that it shall be given retrospective effect. *Duy v. Alabama Western R. R.* 175 Ala. 162, 57 So. 724; *Leahart v. Deedmeyer,* 158 Ala. 295; 48 So. 371.

Since it does not appear from this act that it was clearly the intention of the legislature that it should be given retrospective effect, the courts would construe that its field of operation is prospective only. For these reasons, I am of the opinion that subdivision 20 of amended section 712, Acts of 1919, p. 926, allowing a fee of 25 cents for each birth certificate could not be construed to apply to births occurring or reported prior to the passage of the act.

Moreover, subdivision 20 aforementioned, allows the payment of the fee of 25 cents for each certificate "properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the state registrar." The word *promptly* here used meaning, in my opinion, within the time provided by sudivision 19, and which is on the 10th of each month, for the preceding month. Hoping the above fully answers your inquiry, I am

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

June 5, 1924.

Hon. John W. Abercrombie,
Superintendent of Education,
Capitol.

Dear Sir:

Your letter of May 23rd addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. Your inquiry is as follows:

"I will thank you to advise me concerning the status of the public schools of Phenix City as a result of the provisions of an Act approved August 9, 1923, extending the corporate limits of the said town to include the town of Girard and certain other territory.

"For your information, I will state that before the passage of the act referred to the public schools of the town of Phenix City and of the town of Girard were under the control of separate boards of education elected as provided by law for towns of 2,000 population and over. The question now raised by local authorities of both Phenix City and old Girard involves the disposition of school monies formerly held by the Girard Board of Education and the taking care of a deficit in the school funds of the Board of Education of Phenix City as originally constituted.

"In this connection, I also desire your advice concerning the apportionment of funds by the Board of Education of Russell and Lee Counties to the enlarged corporation of Phenix City."

On August 9, 1923, a local act of the Legislature (Local Acts 1923, p. 52) was approved by the Governor, Hon. Wm. W. Brandon, whereby the corporate limits of the City of Phenix City, which lay wholly in Lee County, were extended so as to include the entire territory of the City of Girard, which lay in Russell County. On the same date another act was approved providing for a commission form of government in cities such as Phenix City became by the extension of her boundaries. (General Acts 1923, p. 99).

The constitutionality of each of these two acts was contested in the case of *State ex rel Brooks v. Gullatt,* 98 So. 373, et seq. The conclusion reached by our Supreme Court in that case is thus set forth:

"Our conclusion, therefore, is that Act No. 130, altering or rearranging the boundaries of Phoenix City is not subject to the constitutional objections here interposed. By this Act the City of Girard was absorbed by Phoenix City, and, therefore, disincorporated. Sections 1156 et seq., of the Code of 1907, contain provisions consequent upon the absorption of one municipality by another, which provisions seem to be in keeping with the general rule of law prevailing in the absence of statutory provisions."

Our attention has been called to a local act of the Legislature, 1890-91, p. 1089, the title of which reads:

"To authorize the Mayor and Aldermen of the City of Girard to establish a system of Public Schools in said City," with the suggestion that this act had never been repealed. But an examination of this local act shows very clearly that its operation is dependent upon the corporate existence of the City of Girard. Such corporate existence has ceased by the passage and approval of said local act No. 130, as already declared by the Supreme Court in the case cited. What then becomes of the schools located within the territory formerly within the corporate limits of the city of Girard? It is clear that the City of Girard has ceased to exist for any purpose and that the City of Phoenix now, for all municipal purposes, exercises complete municipal control over the territory formerly embraced in the corporate limits of the City of Girard.

Section 1157 of the Code of 1907 provides:

"The city . . . . so altering or rearranging its boundary lines shall become vested with the title and ownership of all property both real and personal, including . . . . school buildings, and grounds, parks, fixtures, and furniture of school buildings, ... belonging to the city . . . . so absorbed, or whose government has been extinguished, subject to the same conditions, and to be held for the same uses and purposes, and subject to the same conditions as theretofore."

It seems to us clear that the City of Phoenix City through its City Board of Education, will now administer the schools throughout the entire territory formerly covered by the City of Girard, as well as all other territory now within the corporate limits of said Phoenix City. For the future, until other statutes shall be enacted, the school board of Lee County and the School Board of

Russell County must each determine what apportionment of school funds of its county it will make for the use of the City Board of Education of Phoenix City, in maintaining the schools of said City. It occurs to us that the number of school children in each of the two sections of the city would be the logical basis of apportionment for each of said county boards of education. Each county board should apportion its share of the funds necessary to maintain the schools of Phoenix City in substantial proportion to the number of school children residing in its county to the number residing in said city as a whole. This, in my opinion, should be agreed upon by and between the two county boards. It is my opinion that if this plan is carried out, no legal objections can be successfully raised to it. To do so substantially would be sufficient.

The next part of your inquiry is stated as follows:

"The question now raised by local authorities of both Phoenix City and Old Girard involves the disposition of school monies formerly held by the Girard Board of Education and the taking care of a deficit in the school funds of the Board of Education of Phoenix City as orgininally constituted."

In answer to those questions will say that in my opinion the destruction of the City of Girard by the enactment of said local Act No. 130, also destroyed the City Board of Education of said City of Girard, except for the purpose of turning over the property and money in its possession to whomsoever should be entitled to receive it. In my opinion, if this money left over, formerly being administered by City Board of Education of the City of Girard, came from the apportionment made by the County Board of Education of Russell County, it again becomes legally subject to the control of the County Board of Education of Russell County as to its disposition. If it came from city taxes or city funds, appropriated by the City of Girard, it legally passes under the control of the city government of Phoenix City. As to the deficit in the school treasury of Phoenix City, this raises no question different from what it would have been had the limits of Phoenix City not been changed. In my opinion, if the surplus fund from Girard goes to the City of Phenix City, under the rule above stated, a sufficient amount of this fund might be used; but if it goes back

to the control of the School Board of Russell County, such funds could not be so used.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 6, 1924.

Miss Virginia B. Handley, Director,
Child Welfare Department,
Capitol.

Dear Miss Handley:

Your letter of June 9th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Is Section 6 of the Alabama child labor law, clauses 15 and 16, applicable in the following cases? If so, to what extent?

1. The Jefferson Theatre, Birmingham, Alabama, has employed a professional theatrical company for the summer. Each week these players present a different program which is usually one of the season's popular plays. One of these plays has parts for four children under 14 years of age. The Little Theatre League of Birmingham, a society non-professional, for the promotion of better drama and the development of dramatic talent, has several children who took part in its performances during the past winter. These performances were open only to members and no admittance fee was charged. The parents and friends of these same children and the management of the Jefferson Theatre wish to have them play the juvenile parts in the above mentioned play which will be given for one week only, six nights and three afternoons. The children will be playing with the professional cast but will receive no compensation for their parts in the performances.

2. Pupils of the Miles Dancing School, Birmingham, wish to dance on the stage of the Temple Theatre, a motion picture house, before and after the picture program for one week, six night performances and six afternoon performances. These children are under 16 years of age and will appear under the direction of

C. H. Miles, the director of the dancing school. They will receive no compensation for the performances which are intended to display the talents of the children of the dancing school.

3. Different motion picture houses over the state wish to have professional juvenile motion picture actors, (namely, Jackie Coogan, Baby Peggy, etc.) whose pictures are exhibited at their theatres, to make personal appearances at the theatres where the films are shown. These juvenile actors receive no compensation from the motion picture theatres but their object is possibly to advertise and popularize the films in which they appear which will later be shown at the theatres.

4. Will you kindly advise whether the provisions of the Alabama child labor law prohibit the appearance of children under 16 years of age in amateur theatrical perforances, dancing and musical exhibitions given under the auspices of music, dancing or dramatic instructors? I will appreciate it if you will let us have the opinions by Wednesday of this week."

Section 6 of the Child Labor Law Act, (Acts 1919, page 869) provides as follows: "No child under the age of sixteen years shall be employed, permitted or suffered to work in any capacity: (here naming 14 different kinds of work or places of work); it then proceeds as follows:

"(15) Nor shall any child under the age of sixteen years be employed upon the stage of any theatre or concert hall, or in connection with any theatrical performance or other exhibition or show, except that children fourteen years of age may be employed as ushers in theatres or concert halls in accordance with the provisions of sections 2 and 7 of this Act; (16) nor in any place or occupation which the State Board of Health may declare dangerous to life or limb or injurious to the health or morals of children under sixteen years of age."

It will be noticed from the language of this section that two categories of child activities are considered by the act; 1st, those enumerated in subdivisions (1) to (14) both inclusive; and 2nd, those enumerated in subdivisions (15) and (16) of section 6.

In the first category are those for the performance of which no child can be employed, nor can any child be permitted or suffered to work at.

In the second category are those for the performance of which no child can be "employed"; but the words "permitted or suffered to work" are not here used. It was, in my opinion, the judgment of the legislature that work in either of the first 14 subdivisions was, under all conditions, injurious to either the health, or to the physical or moral development of a child. Childhood is, in an especial sense, the period of development and of danger. It was the purpose of this law to protect children below the age of 16 against the necessarily dangerous and injurious effects of the activities enumerated in the first fourteen subdivisions. Here no one is permitted to employ them, neither are the children permitted or suffered to engage in such work.

In subdivisions (15) and (16) the inhibition goes only to employment. Employment is here used, as we think, in the sense of commercializing or exploiting. In our opinion, it was not intended to prohibit the permitting or suffering children to appear upon the stage of a theater where the parent or guardian as well as the child desires it, and to the extent that may be of educational advantage to the child, and, under such management as will safeguard its health and morals. In other words, the statute does not regard the fact of the child taking part in a play upon the stage of a theatre as necessarily injurious to the child, hence the words "permitted" and "suffered" are not used in this connection.

In answer to the 1st and 2nd paragraphs of your letter will say that where the children are properly looked after and are free to engage in the act or not and the parent or guardian desires it and receives no compensation other than the educational advancement of the child; where there are no contractual duties to be performed, and the child is in no way exploited for gain, we are of opinion such appearance of a child upon the stage of a theatre is not prohibited by said section 6.

In answer to paragraph 3 of your letter will say that such use of children, for advertising purposes, is, in my judgment, contrary to the spirit and purpose of the law.

The answer above to paragraph 1 answers also paragraph 4. Where such performances are given to show to parent or guardian or friend the advancement of a pupil and as part of a teaching program, in my opinion, they are not within the prohibition.

Yours very truly, A. A. EVANS,
Special Assistant Attorney General.

June 6, 1924.

Messrs. Storey, Thorndike, Palmer & Dodge,
Exchange Building,
Boston, Massachusetts.

Re: Harbor Improvement Bonds of the State of Alabama.

Your letter of the 27th ultimo. addressed to the Hon. Thos. C. McClellan and relating to this matter contains the following paragraph, to-wit:

"The act authorizing the bonds provides that the bonds shall be payable primarily from the income of the harbor development and if the funds so supplied are insufficient to pay the installment of interest or principal at maturity the State Treasurer is authorized to pay the deficiency from any funds in the state treasury 'not otherwise appropriated.' There is also provision for applying some of the proceeds of the bonds to the payment of interest. In the event that the harbor development did not produce revenues to take care of the bonds at maturity it would seem that the only method of payment authorized would be to apply moneys unappropriated in the state treasury. If there were no moneys unappropriated an awkward situation might arise and we should be very glad to have the views of the Attorney General as to what he feels would be the power of the state in such circumstances in order that it may meet its obligations promptly at maturity."

For many years the Legislatures of Alabama have used the stereotyped phrase "not otherwise appropriated" in a large majority of the acts making appropriation of such funds. An examination of the General Acts of 1911, 1915 and 1919 and 1923, which contain the laws of four different legislative bodies, discloses a large majority of the most important appropriations made by the Legislature contain the phrase "not otherwise appropriated." The provision made for the support of the home for mental inferiors, boys industrial school, county high schools, vocational schools and many other important institutions and activities, which the state

has supported for many years and for the support of which it was the undoubted intention of the Legislature to make an unconditional appropriation, contain the stereotyped phrase "not otherwise appropriated."

Such appropriations have been considered in practice for many years by the state auditor and the state treasurer as being unconditional appropriations out of the general funds of the state. The present Constitution of Alabama contains several provisions levying a tax for a specific purpose, such as the levy for certain educational purposes. These funds, are of course, by virtue of the constitutional provision appropriated to this particular use and are not subject to appropriation by the Legislature to any other purpose.

Only the moneys of the general funds of the state are subject to appropriation by the Legislature.

In view of the foregoing, I am of the opinion, that the Courts would necessarily hold that the phrase "not otherwise appropriated" merely was a stereotyped expression which indicated that the Legislature did not intend to appropriate any funds derived from taxes levied by the Constitution of Alabama for a specific purpose and not subject to legislative control.

In my opinion, the appropriation carried in the Port Act authorizing Harbor Improvement Bonds of the State of Alabama is an unconditional appropriation of any funds of the state subject to appropriation by the Legislature, or, in other words, is an unconditional appropriation out of the general fund of the State.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 7, 1924.

Hon. Frank N. Julian,
Commissioner of Insurance,
Capitol.

Dear Sir:

You have asked for advice from this office on the following question:

Whether or not corporations having authority under their charter to execute bonds may become sureties on attachment and detinue bonds without complying with the provisions of Article 5, Chapter 33, of the Code of 1907.

The Article referred to is based on an Act approved Feb. 12, 1897 (Acts 1896-7, p. 830), the title to which reads as follows:

> "An Act to authorize corporations, having the power under their charter, to become securities on the official bonds of State, county and municipal officers, and receivers, guardians, administrators, trustees, assignees, and executors and on all bonds or undertakings required or permitted by the laws of this State to be executed with sureties; to regulate the giving of such bonds and prescribe the qualifications of such corporations; and to provide for the relief of such corporations from further liability thereon."

It is clear from a reading of Section 1507 of the Code, in the light of the title to the Act from which it was taken that it was the intention of the legislature in enacting same to give an officer, charged with the duty of approving official or court bonds, authority to approve same when executed by a guaranty company which had complied with the provisions of the Article, regardless of what the law required as to the qualifications of sureties on such bonds.

That part of Section 1507 involved in this question reads as follows:

> " . . . . When any person . . . . is required . . . . to execute any bond . . . . in any judicial proceeding, ... the court officer . . . . charged with the duty of approving such bond . . . *may* . . . approve the same when executed by a corporation . . . . as surety, having complied with the provisions of this article; and the execution by any such corporation as surety, of any such bond . . . . shall be, in all respects . . . . a full and complete compliance with the requirements of any law . . . . requiring (that) such bond . . . . shall be executed by one surety, or by one or more sureties or that such surety or sureties shall be residents of the

State or any county therein or shall be householders or freeholders, or either or both, or shall possess any other qualification."

I do not think that this section can be construed to take away any authority an officer already had in approving bonds but is a grant of further authority; and a repeal of laws requiring specific qualifications of sureties on such bonds as to guaranty companies which have complied with the provisions of the Article.

Attachment and detinue bonds are required to be made "with sufficient surety" to be approved by the clerk. There is no provision that the surety shall have any specific qualifications.

Code of 1907, *Secs.* 2928 *and* 3778.

I am of the opinion, therefore, that a guaranty company may, without complying with the provisions of Article 5, Chapter 33, become surety on attachment and detinue bonds subject to the approval of the clerk.

If the law required that sureties on attachment and detinue bonds should possess any of the specific qualifications mentioned in the last clause of Sec. 1507 and a guaranty company did not possess such qualifications it could, by complying with the provisions of the Article, become sufficient surety on such bonds. In other words, a guaranty company qualified to do a surety business in this State, cannot become the sole surety on any official bond which the laws of the State require to be made by more than one surety, or any other specific qualifications are required, which the guaranty company does not possess without having complied with the provisions of the article above referred to.

Attachment and detinue bonds are official bonds within the meaning of said section.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

June 12, 1924.

Hon. Chas E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of the 10th inst. contains the following inquiry: "Is a claim for interest due on warrants on the State Highway Bond Fund a proper charge against the maintenance funds of the State Highway Department?"

The duties and powers of the State Highway Department and the State Highway Commission are contained in the Act approved September 24, 1923, (Acts 1923, p. 370).

An examination of this act shows that neither the State Highway Department nor the State Highway Commission has any authority to borrow money or to contract to pay interest.

It follows that this claim for interest would not be a proper charge against the funds of the State Highway Department. Herewith is returned the warrant submitted with your inquiry.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 18, 1924.

Hon. George W. Ellis,
State Treasurer,
Capitol.

My Dear Sir:

Your request to be advised whether or not you would be permitted to deposit securities from insurance companies in a safety deposit vault of a bank in Montgomery over which said state deposit vault you had exclusive control in the event the vault of the Treasury Department was found to be unsafe to properly protect such securities.

You further advise that the companies depositing the securities request this action and offer to secure you against loss or damage.

In an opinion rendered on July 8, 1921, to the State Treasurer, it was held that Section 4575 of the Code of 1907 required such securities to be deposited by the treasurer in a vault in the treasury department, and be directly under the control and in the possession of the State Treasurer.

While this is undoubtedly the intention of the provisions of this section, I am of the opinion that if the vault of the Treasury Department became unsafe that the Treasurer would have the legal right to deposit such securities in a safety deposit vault of a bank if such safety deposit vault was entirely under his control.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 18, 1924.

State Board of Administration,
Capitol.

Dear Sir:

Your letter of this date addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You wish to know your authority to enter into the contract, a copy of which is hereto attached and marked Exhibit "A."

In reply will say that in my opinion, such authority is given by the last sentence of section 18 of an Act approved February 10th, 1923, Acts 1923, page 72. This part of said section is as follows:

"If any officer of the state thinks best to sell any furniture or other articles in his office or department, he shall give notice of such desire, in writing to the Board of Convict Supervisors with an itemized list of the articles and reasons for selling and, if in the opinion of the Board of Convict Supervisors and the Governor, it is desirable that such articles be sold, they shall be sold by the Board of Convict Supervisors, which, with the approval of the Governor, may prescribe rules and regulations to secure the best price for the state and the faithful accounting to the state for the proceeds of the sale."

The contract, a copy of which is attached, when duly executed by the parties thereto and approved by the Governor, and the bond is duly executed as provided by the contract, will be, in my opinion, a substantial compliance with the requirements of said Section of the statute.

Of course, the Highway Commission will have to give you the notice required, in writing, together with an itemized list of the articles which it is desired shall be sold. The other requirements of said section are met in my opinion, by the execution of said contract and the approval thereof by the Governor.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 20, 1924.

Hon. M. V. Henry, Treasurer,
Jefferson County,
Birmingham, Alabama.

Dear Sir:

You certify the following question to this office for advice, to-wit:

Is the Act approved September 28, 1923 (General Acts of Alabama, 1923, page 612) creating the domestic relations court unconstitutional? You state that you had been called upon as county treasurer to pay the salaries of the judge and other officials of this court. You desire to know whether you would be justified in making those payments.

The validity of the Act is first questioned on the ground that the title contains two separate and distinct subjects and thereby violates that provision of Section 45 of the State Constitution which requires that "each law shall contain but one subject, which shall be clearly expressed in its title."

So much of the title of the Act which is necessary to properly consider this question is as follows, to-wit:

> "An Act to provide for and establish . . . . a Court to be designated The Court of Domestic Relations: . . . . to

define the jurisdiction, power and authority of such courts; . . . . to provide for and regulate the procedure in such courts; to authorize the senior judge of said courts to determine the form of records; to provide for appeals from said courts and to regulate the same . . . . "

It is suggested that this last phrase quoted from the title, to-wit: "To provide for appeals from said courts and to regulate the same" includes in the title the subject of regulating the rules and practices of the circuit court, to which it is provided by section 18 of the Act, that appeals lie from the Court of Domestic Relations, and that the regulation of the rules and practices of the circuit court in such cases is an entirely different and separate subject to the first expressed in the title, to-wit: "To establish a Court to be designated as a Court of Domestic Relations," etc.

Even if it be conceded for the purpose of argument, that the regulation of the procedure in such case pertaining to domestic relations when appealed to the circuit court was not germane to the subject of the act expressing the purpose to create such court and vest in it certain jurisdiction and powers, a reading of the title of the act discloses that this particular phrase, "to provide for appeals from said courts and to regulate the same," does not mention circuit court procedure or intimate that any provision is to be contained in the act which is not necessary to accomplish, and cognate to the general purpose of the act as clearly expressed in that part of its title preceding such phrase.

Even if the phrase were capable of being given such meaning, the courts would attribute to it that meaning which would uphold the statute.

State v. Board, 180 Ala. 489, 61 Sou. 368.

Courts do not imply meanings which would make a statute violative of the constitutional requirements, but always seek to give words and phrases meanings which would sustain the validity of the enactment.

Dancy et al. v. Alabama Power Co., 198 Ala. 504, 73 Sou. 901.

Bouchelle et al. State Highway Commission in M. S.

It is next contended that the provisions of Section 18 of the Act are not cognate or germane to the subject expressed in the title of the Act, and that the invalidity of this section nulifies the entire act.

Said Section 18 regulates appeals from the Court of Domestic Relations to the Circuit Court. That part of Section 18 which is contended to be a separate subject from that clearly expressed in the title thereof is a provision giving "the party aggrieved in the Court of Domestic Relations right to apply to any circuit judge or chancellor of said county for an order to said Domestic Relations Court to grant said appeal"; also this provision, "in criminal cases, the defendant, appellant, at the time of taking an appeal shall have the right to demand a trial by jury in said circuit court and upon such demand shall be tried at the hearing of said case in said circuit court"; and also the following provision, to-wit; "all cases so appealed shall be regarded as preferred cases in said circuit court."

It is contended that those and other minor provisions regulate the procedure and practice of the circuit court, which is a subject entirely foreign to the subject expressed in the title of the Act. Even if this be granted, those provisions could be stricken from the act and leave a valid and complete law.

Railway Company v. Morris, 65 Ala. 193.

In my opinion it cannot be seriously insisted that these provisions which incidentally apply to the circuit court, and which it can be readily seen are absolutely necessary to a complete enactment on the subject expressed in the title are not cognate to and germane to the subject.

Section 45 of the Constitution was intended to prevent "Hodge podge or log rolling legislation."

Lindsey v. U. S. Association, 120 Ala. 156.

As has been aptly said, "The Constitution is intended as a garment of protection and not as a Nessian shirt of torture." It was never intended to compel the passage of several acts before complete legislation could be secured as to one general subject matter.

In the light of the large amount of legislation relating to domestic affairs and the now generally accepted theory that the

interest of the individual and society is best subserved by providing means peculiarly adapted to handling matters appertaining to youth and home life, the term "Domestic Relations Court" is self-defining. Within the scope of this subject is clearly embraced every provision deemed essential by a legislative body to dealing with this particular class of cases.

In my opinion the title of the Act contains only one subject matter which is clearly expressed therein, and all provisions of the act are cognate and germane to this subject expressed in its title.

It follows that it will be proper to pay the salaries of the judges and other officers of the Domestic Relations Court of Jefferson County.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 23, 1924.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You request to be advised whether the appropriation made by the Act approved October 6, 1920 (Acts Special Session 1920, page 137) is available for expenditure without an equal amount of Federal Funds being expended therewith.

Section 4 of this Act provides that "The State Board shall administer the funds provided by the Federal Government and the State of Alabama under the provisions of this act, for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment."

Said section also provides that the state Board shall have authority "to pay such compensation and other necessary expenses of administration from the funds appropriated by this act."

Section 7 of the Act provides that "The moneys appropriated and accruing shall be paid out upon the requisition of the State Superintendent of Education upon the auditor, who shall draw his warrant upon the State Treasurer for the amount for which requisition was made."

Section 6 of the Act provides that "The State of Alabama shall for the purposes of this Act appropriate" for each year $21,872.93.

From the excerpts quoted it will be noted that the appropriation is made for the purpose of the act, and that purposes of the act are for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

It will be further noted that the State Board is given authority to pay such compensation and necessary expenses of administration from funds appropriated by the State and that in no place is a condition precedent to the expending of the State funds for necessary expenses of administration conditioned upon the expenditure of an equal sum of federal funds.

It is true that the act accepts the provisions of the Act of Congress approved June 2, 1920, which has for its purpose the accomplishment of the same results as does the Alabama Act under consideration, and that the Act indicates that the Legislature anticipated that there would be available Federal Funds to be expended in the state in connection with the appropriation made by the State. However the availability of the State funds was not conditioned on the availability of federal funds.

It is, therefore, my opinion that this appropriation made by the state is available for the purposes of the Act, regardless of the availability of Federal Funds.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 24, 1924.

Hon John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

Your letter of the 6th instant contains the following inquiry:

"Will you please advise me whether failure or refusal on the part of the county superintendent of education to file

in writing with the county board of education the name of the person to be selected by that body as principal of the county high school invalidates the action of the board in selecting a person in the absence of such nomination by the superintendent as is required by law? (See Section 12, Article 5; Section 14, Article 6; Section 4, Article 24, of the School Code, Act approved September 26, 1919)."

In the case of *Board of Education v. Watts,* 95 Sou. Reporter 498, the Court of Appeals in construing Section 12 of Article 5, supra, said:

"Under this statute (Section 12) the County Board has no power to act until a principal has been recommended in writing by the Superintendent of Education. The power of selection is joint, and until the superintendent has nominated a principal as required by Article 6, Section 14 of the School Code (Acts 1919, p. 590), there is no occasion for action on the part of the County Board of Education, and a mere failure to act cannot be construed into a waiver of anything or to an implied contract."

This language of the Court of Appeals of Alabama answers conclusively the above inquiry.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 26, 1924.

Mr. D. F. Byrd,
Tax Assessor,
Ozark, Ala.

Dear Sir:

Your letter of June 23rd addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Ozark has a population of more than 2,500 people, it is a school district within itself. It has a three-mill district school tax, the City has been assessing and collecting this tax.

"The City Authorities have asked me as Tax Assessor for the County to make this assessment, and that the County Tax Collector collect them in the fall.

"Please advise that if, under the 1923 Acts, it is the duty of the County Assessor to assess these taxes and the County Tax Collector to collect them, in order that we may have authority to perform this duty."

In reply to your inquiry will say that section 6 of Article 12 of the Act approved September 26th, 1919, Acts 1919, page 611, provides among other things, as follows:

"And if it appears as the result of such election that a majority of those voting in said election have voted for such taxation, the Court of County Commissioners or other governing body, shall levy said special tax and cause the *tax assessor* to assess the same on the taxable property in said County, or in said rural or City School district, as the case may be, which shall not exceed", etc.

The above provision of the law of 1919 has not been changed. It makes it the duty of the tax assessor to assess the district three mill school tax whether rural or City.

Section 6 of an Act approved September 29, 1923 (Acts 1923, page 695), amending section 8 of Article 12 of said Act of 1919 provides, among other things, the following:

"Whenever such a levy as is provided for in this Article is made it shall be the duty of the tax collector within and for that county to collect such tax in the same manner and under the same requirements and laws as the taxes of the State are collected, and he shall keep said amount separate and apart from all other funds, and keep a clear and distinct account thereof, showing what amount is paid, and turn over the same * * *; and in case of *cities* and towns under independent boards said county tax collector shall collect said taxes and pay over the same to the treasurer of said City or town to be used for the exclusive benefit of the schools thereof in accordance with the law," etc.

You will see from the foregoing two quotations—one from an Act of 1919 and the other from an Act of 1923, that the tax assessor of the county is required to assess the district three mill school tax in the city of Ozark and the tax collector is required to collect it and pay it over to the City Treasurer.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

June 30, 1924.

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Ala.

Dear Sir:

Your letter of July 30th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "A resident citizen of Elmore County purchases a second hand automobile for private use in the City of Montgomery and takes out a license from the office of the Probate Judge of Montgomery County; can such person operate such automobile in Elmore County without taking out a license from the office of the Probate Judge in Elmore County?"

In reply will say that under the facts named by you it was proper that such person should take out a license to operate said automobile in Montgomery County. He was not authorized to operate said automobile by running it out of Montgomery County without taking out a license and when such license has been taken out in Montgomery County no other State and county license can legally be required of him for operating such automobile anywhere in the State.

Very respectfully,
A. A. EVANS,
Special Assistant Attorney General.

July 1, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

In an opinion addressed to the State Prison Inspector on December 19, 1923, Mrs. Edwina Falkner, Assistant Attorney General, reached the following conclusion relative to the right to charge for the feeding of prisoners, to-wit:

> "We are, therefore, of the opinion that under the law the sheriff is entitled to compensation, according to the scale provided, for every prisoner confined in jail during the day, and that the length of his confinement during the day is immaterial, but we are of the opinion that the prisoner must be *confined* in good faith for part of the day, and that a mere arrest and release on bond is not a confinement in jail."

Your inquiry states that many prisoners arrested by the Sheriff of Mobile County or his deputies are carried to a desk at the jail to execute bond; that because of the peculiar construction of this jail that the desk is "behind the bars."

I am requested to advise whether carrying a prisoner to this desk constitutes the confinement of such person as a prisoner so as to entitle the sheriff to pay for feeding him.

You further request that if this does not constitute the person a prisoner to advise whether or not it is necessary that such person "be locked in a cell" before the sheriff becomes entitled to charge for feeding him.

Necessarily the peculiar construction of a jail has nothing to do with determining whether or not a person is confined in the jail as a prisoner within the meaning of the statute permitting the sheriff to collect from the state for food served a prisoner. *Acts* 1923, page 704.

It is possible for a person to be confined in jail without being confined as a prisoner. Within the meaning of the statute under consideration, a prisoner is a person deprived of his liberty by virtue of judicial or other lawful process, and not a person who

is entitled to bail and is able and willing to make bail, and who is carried within the jail for the purpose of executing bond. Such person would not be a prisoner within the meaning of this statute even if he was carried into a locked cell.

Whether or not a person is confined in the jail as a prisoner is a question of fact to be determined by a consideration of the peculiar circumstances of each case. No line can be drawn at any particular part of the jail so as to be able to say that when a person crosses that particular place he is a prisoner within the meaning of this statute. In many cases bail is a matter of right and the usual practice is to permit the person when arrested a reasonable opportunity to make bond so as to keep at liberty and prevent being committed to jail.

A person should not be arbitrarily deprived of this right by rushing him to jail and having him technically or temporarily confined for the purpose of increasing amount which the sheriff could charge the state for feeding prisoners. In such a case the person is not a prisoner which is entitled to be placed on the statement of prisoners fed, for which the state becomes liable.

The unmistakable intention of the Act approved September 29, 1923, (Acts 1923, p. 704) was to reimburse the sheriff for the actual cost of the food served, which cost should not exceed a certain amount, and to allow the sheriff compensation for preparing and serving such food. Any scheme or device which defeats this purpose is illegal. Any method pursued which seeks to secure a profit to the Sheriff for preparing and serving the food other than that allowed by Section 4 of the Act is improper.

It is true the legislature did not divide the day into fractional parts for the purpose of determining whether or not a prisoner's feeding became a charge against the state. This was perhaps best on the theory that probably the food would be prepared and the expense incurred before the jailer would know that the prisoner was not to be confined in jail during the time the meal was served. This leeway was undoubtedly intended for the protection of the sheriff where the food had been prepared and to prevent him from bearing the burden of the loss. It was never anticipated that a provision intended only for the protection of the sheriff should be used as a means of creating an extra-charge against the state.

In determining whether or not a prisoner's name is properly included on the feed bill it is necessary to ever bear in mind the purpose of the law and its evident intent, as hereinbefore stated.

Where it is evident that a sheriff has included on his feed bill of prisoners persons who were only technically confined and who he knew would not be present in the jail to be fed at any meal, I am of the opinion that the examiner of accounts should then seek to ascertain every person appearing on such feed bill who was not served a meal during the time he was in jail, it being apparent that the charges against the state had been improperly made. Under such circumstances, the burden should rest upon the sheriff to show that all prisoners appearing upon the feed bill who did not eat a meal during the term of their confinement were not temporarily confined simply for the purpose of including them upon said feed bill, and increasing the allowance to the sheriff paid out for feeding prisoners.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 2, 1924.

Mr. G. W. Humphries,
Tax Collector,
Bay Minette, Alabama.

Dear Sir:

Your letter of June 30th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You write as follows:

> "Please advise me at once your construction of Section 270 of the 1923 Revenue Code, this section governing the redemption of lands sold to another than the state, in collection of taxes that are not due?
>
> "For example, lands sold for 1923 taxes are to be redeemed now, before the 1924 taxes are due, the lands being duly assessed for 1924. Must the collection of this 1924 tax be compulsory to make proper redemption?"

In reply will say that section 291 of the Revenue Act, 1919, which constitutes section 270 of the compilation of tax laws made by Mr. Henry Allen, and which is the present law with reference to redemption of land sold at tax sale and purchased by a person other than the state provides for the following payments, or so many of them as obtain in the particular case:

1st. To the Judge of Probate of the county, where the land is situated, the amount of the purchase money with interest thereon from date of sale at the rate of 15 per cent per annum;

2nd. To such judge of probate all taxes that have been paid by the purchaser since he purchased the land, with interest thereon since date of payment of such taxes at the rate of eight per cent per annum.

3rd. To the tax collector, all taxes that have been assessed against the land, *which are due and unpaid.*

4th. The person seeking to redeem must deposit with the tax collector money sufficient to pay, when due, all taxes that *have been assessed* against the land, but have not been paid by the purchaser *because not due.*

5th. To the Judge of Probate to be paid out by him to the officers, entitled thereto, all costs and fees due to any officer in connection with the sale of said land.

6th. To the Judge of Probate for his services in the matter of such redemption a fee of one dollar.

You will see from the foregoing, under ordinal 4th, that, in the case mentioned by you, the person wishing to redeem must among other things, deposit with the tax collector of the county the amount of the assessment on the land which has been made but is not yet due, so that the tax collector shall hold the money until such tax is due and apply it to the payment of the assessment against said land when due, and this deposit releases the purchaser from the payment of the taxes so assessed against him on said land when due.

The Probate Judge should not allow redemption until such payments have been made.

The payments made under ordinals 1st and 2nd above must be paid by the Judge of Probate to the purchaser of said land at tax sale.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

July 10, 1924.

Hon. C. J. Allen,
Superintendent of Education,
DeKalb County,
Fort Payne, Alabama.

Dear Sir:

The Attorney General has referred to me your letter of the 28th ultimo, in which you make inquiry to the holding of elections under the provisions of Article 12, Section 5, of the School Code, Acts 1919, p. 610, section 5.

I am of the opinion that article 5, section 10 of the School Code, Acts 1919, page 585, Section 10 has no bearing upon the enlargement or consolidation of school tax districts, but relates only to the consolidation of schools without regard to whether they are in a special tax district or not.

Section 5 of Article 12, above referred to is the complete guide for the enlargement of a special tax district and for the consolidation of two or more special tax districts. This section 5 as will be noted, provides for the following course at the schools under the control of the county board of education:

(1) A petition by the board of education to the court of county commissioners "to call an election *in all* of the districts concerned," including the special tax district proposed to be enlarged, for the purpose of determining whether a special tax for a uniform rate and time shall be voted in *each and* every one of the districts. This contemplates separate elections in each of the several districts involved.

(2) The calling of the election by the court of county commissioners as prescribed in Article 12, Section 3, in the Special Districts proposed to be consolidated. You inquired about where the polling places would be. Note that Section 3 provides that they shall be "each voting place in the school district" (which means the regular voting places which have been used) "or at such special voting places as may be designated for the special election by the judge of probate of the county who is hereby empowered to locate such voting places, upon the recommendation of the county board of education, and such special voting place shall be set out in the notices of election." I note in this connection that you propose to consolidate districts numbers 19 and 48,

and 48 is not mentioned in your notice, but the notice does mention districts numbers 68 and 81, which do not seem to be involved, and your notice makes no mention of the voting places nor of the fact that the proposal is to consolidate districts numbers 19 and 48.

(3) Said Section 5 provides that "if a majority of the qualified electors *in each and all* of the districts proposed to be consolidated shall vote favorably the districts shall be consolidated into a new district, and the taxes voted shall be levied and collected in the new district as a unit" . . . . "in the event a majority of the qualified voters *in any* of the districts proposed to be consolidated shall vote against the proposed consolidation, then said consolidation shall not be made and each district shall remain as before, and with the same taxing privileges" (Italics supplied). You will thus see that your inquiries are answered by the above to the effect:

(1) The voting places shall be the regular voting places unless special places shall be signified in the manner above indicated;

(2) In order to avoid any possible question which might arise, separate notices should be given as to the proposed consolidation of that district with the other or others describing the present district and the proposed consolidated district.

There must be a majority in favor of the proposed consolidation in each and every district or the consolidation shall not be made.

I am enclosing for your information and guidance a set of forms in use by the State Department of Education in which you will find that some changes will be necessary in order to conform to the course which I have outlined above.

I also suggest that you read the cases of Gantt v. Court of Commissioners of Covington County 97 So. 129, to the effect that it should appear that the county is one levying and collecting special county taxes; also Shanks et al. v. Winkler et al., 97 South 142, as to the character of notice which must be given in order to render the proceedings valid.

Yours very truly,
LAMAR FIELD,
Assistant Attorney General.

July 10, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

You request to be advised if any legal authority exists for the payment from the highway funds of the traveling expenses of the highway engineer incurred by making a trip to New York to attend the Democratic National Convention for the purpose set out in the following resolution:

> "Mr. Suttle made a motion which was seconded by Mr. Scruggs that the Highway Commission approve payment of expenses of W. S. Keller, State Highway Engineer to the Democratic National Convention, New York City, Mr. Keller being a member of the American Association of State Highway officials and Mr. Keller going there to urge the incorporation of a plank in the Democratic Platform continuing Federal Aid appropriation to the states to aid in the building of roads. On roll call the motion carried unanimously."

Section 4 of the Act approved September 24, 1923, (Acts 1923, p. 370) provides that "The State Highway Engineer shall also be allowed his actual and necessary traveling expenses as provided by law while engaged in the performance of his official duties and he shall give his whole time to the duties of his office."

It will be noted from this provision that traveling expenses can be paid only in event such expenses are incurred while traveling in the performance of official duties. No provision is contained in the Highway Act which can be construed as placing any duty upon the Highway Commission or the Highway Engineer relative to the drafting of the platform of any political party.

The account, therefore, is not a proper charge against the Highway Fund.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 10, 1924.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Ala.

Dear Sir:

Your letter of recent date addressed to Judge C. E. McCall, Chief Examiner of Accounts, has been referred by him to the Attorney General for reply. You write as follows:

"Please let me have an opinion as to the legality of a payment based on the following facts: The bridge over the Alabama River at Selma is in bad condition and the State Highway Commission has consented to put it in repair, it being a part of a State project. The Highway Commission advertised for bids for this repair work, one being on a basis of keeping the bridge open for traffic from 6 A. M. to 6 P. M., and the other on a basis of keeping it open from 6 A. M. to 1 P. M., with the understanding the county or citizens here would, if they chose, take care of the difference in price and keep it open all day—6 A. M. to 6 P. M. The bids were opened and it was found that there was a difference in price of $1,000.00 and the Highway Commission notified to provide the money if we desired it kept open from 6 A. M. to 6 P. M. The Secretary of the Chamber of Commerce of Selma notified the Highway Commission that a Committee from the Chamber of Commerce had secured the money and it would be subject to the check of the Highway Commission and to keep the bridge open.

"After doing this, a committee from the Chamber of Commerce came before the Court of County Revenue and protested that they had to put up this money and requesting the county to donate the $1,000.00 and release the Chamber of Commerce, or refund the money to those who had paid it.

"As this is strictly a State proposition, a State contract and the additional money merely for the convenience of people in allowing them to use the bridge all day, I could see nothing in it but a pure donation of money for a matter which could not be said to be necessary except to a few people whose business might be affected in some way. Should

we pay it to the Highway Commission it would be to supply a sum to them which it would be unlawful for them to pay or appropriate in the first instance. If we paid it to the individuals, it would be merely a gift."

As we understand the facts of the matter stated in your letter the bridge for which repairs are to be made is a "bridge on a State trunk road" in your county. Section 12 of Act No. 368, Acts 1923, pages 375 and 376, provides, among other things, as follows:

"Whenever the Court of County Commissioners, Board of Revenue or other like governing body of a county shall desire that a State trunk road or bridge on a State trunk road, in said County be constructed or maintained, with State aid, written application shall be made by the county to the State Highway Department under such rules and regulations as the Department may prescribe. Such applications, when made, shall be considered by the Department and if approved by it, the Commission shall direct the State Highway Engineer, or one of his Assistants, to view said road or bridge and cause to be made surveys, plans, specifications and estimates of cost of construction of maintenance, and the State Highway Department may thereupon appropriate out of the State Highway Fund such part of the estimated cost of such work as it may deem proper and the State Highway Department shall proceed to do such work by contract or with its own forces. If it deems best, the Department may accept appropriations from the county for said work, which shall be paid into the State Treasury to the credit of the State Highway Fund before the work begins."

The foregoing states the manner in which such work must be done. We find no other method by which the County is authorized to make appropriations for the purpose of maintaining a bridge on a State trunk road or interfere in any way with the construction or maintenance of a State trunk road, or bridge thereon. If others have already contributed the money required to help in repairing the bridge we find no way provided by law for the

Commissioners Court to reimburse them out of county funds for the amount so expended. We do not doubt that the State Highway Department has the right to contract for the work to be done at such times and in such manner as to not stop crossings over the bridge, even though the price of doing so is higher than would be the case of doing it otherwise; but where the county is to pay part or all the cost of construction and maintenance in such cases the method laid down in the statute must be substantially followed. In other words, the statute having provided what the Court of County Commissioners and the State Highway Commission must do in such a case, the method provided must, in our opinion, be substantially followed in order to warrant the court of county commissioners to pay over the money out of the county funds.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

July 11, 1924.

Judge J. F. Posey,
Judge of Probate,
Prattville, Ala.

Dear Sir:

Your request is at hand in which you ask the Attorney General for an opinion as to the authority of the judge of the Inferior Court of Autauga County, as established by Local Act of 1923, p. 244, to remit fines in said court.

This court was created in lieu of all justice courts in Prattville Precinct, as allowed by section 168 of the Constitution of 1901. The jurisdiction is co-extensive with a justice of the peace, and with concurrent jurisdiction with the county court of misdemeanors.

The court shall be open at all times for the taking of orders and the trial of cases. (Sec. 24.)

The Legislature had no authority to pass a local law remitting fines, penalties or forfeitures. *Const. Sec.* 104. *Sub. Div.* (28).

No attempt was made in said act to legislate on said question. Therefore, since all courts have the inherent authority to control and supervise their own judgments at and during the time of the rendition of the judgment, and at the term thereof, this same right would reside in this court as long as the court was open and in session at the time at which the judgment was rendered. But after the expiration of this time the court would be powerless to alter, modify or extend the judgment. *Ex parte State Re Newton,* 94 Ala. 431.

This power to remit fines and forfeitures after the close of the term at which the judgment was pronounced rests alone with the Governor. *Const.* 1901, *Sec.* 124.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

July 14, 1924.

Hon. George Malone,
Judge of Probate,
Athens, Ala.

Dear Sir:

Your letter of recent date addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Will you please give me your opinion, as to whether or not a party whose lands have been sold for taxes, can redeem same after the lapse of two years, and before the purchaser demands a deed. I know the purchaser can demand a deed after the lapse of two years, but suppose he does not, can the original owner redeem after the period of two years has elapsed?"

In reply to your inquiry will say that where lands have been sold for taxes and purchased by a party other than the State, redemption may be had at any time within two years from date of sale, but not afterwards. The General Revenue Act, Section 289,

Acts 1919, page 366. The purchase at a tax sale is a contract between the State and county on the one hand and the purchaser on the other, and part of this contract, in the State of Alabama, is that the owner or other party, having a right to redeem, shall have only two years in which to redeem. After such purchase, the Legislature itself would have no right to extend the time of redemption, even by special act to that effect.

Cooley on Taxation, 3rd Edition, page 1054.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

July 16, 1924.

Mr. W. H. Glenn, Trustee,
Atlanta, Georgia.

Dear Sir:

Your letter of May 14th addressed to the State Tax Commission of Alabama, Montgomery, Alabama, has been referred by said Commission to the Attorney General for reply.

You write as follows:

"About three weeks ago the Shippers Compress Company received a notice of the Corporation Franchise tax due in the State of Alabama, amounting to $428.50.

"On March 21, 1924, the Shippers Compress Company went into bankruptcy, and its affairs have not, yet, been wound up. In the meantime, I will be very glad if you will inform me whether this particular tax is a lien on the property of the Shippers Compress Company, so that I may know how to handle it in case the properties in Alabama are sold."

In reply will say that we have two statutes covering your case. One is section 405 of the General Revenue Act, 1919 (Acts 1919, p. 447) and the other is section 368 of the same Act. Section 405 is as follows:

"Section 405. When any tax payer makes a general assignment of his property for the payment of his debts or is declared a bankrupt, or when dead and his estate is or becomes insolvent any

unpaid taxes assessed against him or against his estate shall be a preferred claim, and shall be paid by the assignee, trustee or personal representative out of the first money received by him belonging to the trust or estate."

The franchise tax in question is a tax assessed against the Shippers Compress Company and, as we understand, this company has been declared a bankrupt. Under these facts the claim for said tax becomes a preferred claim against the property in this state, and should be paid out of the first money received by the trustee from sources in this state.

Section 368 is as follows:

"Section 368. The State and Counties shall have a lien superior to all other liens upon all the goods, wares, and merchandise of any person liable for the payment of license taxes due to the state or county, and all costs; which said lien may be enforced by attachment in one and the same suit and in the name of the state."

Our Supreme Court has held that franchise tax is primarily, a license tax, *Sou. Ry. Co. v. Green,* 160 Ala. 396. It, therefore, follows that if the Shippers Compress Company had any personal property in Alabama there was prior lien on such property for the payment of said tax, in addition to the fact that said Section 405 makes said claim a preferred claim to be paid out of the first money received by the trustee belonging to the estate of the bankrupt. Of course, this could not apply to money received from sources outside of this state by a foreign corporation; but, as already said, it does apply to property in this state and money received from sources in this state.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

July 17, 1924.

Hon. A. E. Jackson,
Superintendent of Banks,
Capitol.

Dear Sir:

Complying with your request to examine the enclosed Declaration of Incorporation of The Guarantee & Trust Company, in order to see that it complies with the laws of Alabama, I beg to advise you as follows:

1. Trust companies are made amenable to the general banking laws of the state, insofar as said laws of the state are applicable to trust companies.

Code of Alabama, 1907, Sec. 3528, as amended by Acts of 1923, p. 31.
Montgomery Bank & Trust Co. v. State, 78 So. 825.

2. They shall be examined by the State Bank Examiner as State Banks are examined. Acts 1923, p. 31.

3. As a Trust Company in cities of five thousand inhabitants or less it should have a paid up capital of not less than Twenty-five Thousand Dollars.

Code of 1907, Section 3529.

4. As a corporation engaged in the business of issuing guaranties of title to land it shall have a paid up capital of not less than One Hundred Thousand Dollars, and must be examined by the Commissioner of Insurance when and so often as he may deem advisable.

Acts of 1923, p. 635.

The purpose of this corporation appearing in the declaration, among other things, is: "B. To prepare and examine abstracts of title to real property and issue guarantee policies thereon."

"D. To act as trustee, escrowee, transfer agent, executor, administrator, guardian, conservator, receiver, or any other fiduciary capacity."

"E. To do general trust business."

The letter of the company attached shows a paid up capital of forty thousand dollars, and with $22,250 of the capital stock subscribed for. This statement to me is somewhat incongruous, since all the capital must have been derived from subscription.

If the meaning is that $22,250 alone of the $100,000.00 has been subscribed and paid for, then it falls short of complying with the law either as a trust company or as a corporation issuing guaranties of title to land as it should have not less than $25,000 paid in as a trust company and not less than $100,000 as a title guaranty company.

This company in the exercise of its charter purposes will be under the superintendent of banks, and must also be examined by the commissioner of insurance.

The declaration of incorporation furnished on its face does not appear to be in violation of the Blue Sky Law, but the Act designating what are speculative securities, as amended by Act of 1920, page 60, specifies that the term "speculative securities" as used in the Act, shall be taken to mean and include: (1) All securities to promote or induce a sale of which, profit, gain or advantage, unusual in the ordinary course of legitimate business, is in any way advertised or promised: (2) All securties for promoting a sale of which a commission of more than 5 per cent is offered "or paid." Other grounds are contained in the Act, which would guide in classifying the securities which are unnecessary to set forth here. The above is said in explanation of our inability to say whether or not these securities are "speculative" within the meaning of the law, without the aid of a statement containing the history of each transaction of a sale of the stock, and the financial affairs of the company.

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

July 22, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol,

Dear Sir:

The Attorney General is in receipt of your letter of the 10th instant, in which you state facts, and ask questions appearing therein, as follows:

"The County Depository purchases or discounts certain warrants held by an individual for 90 per cent of their face value and immediately pays itself for the full 100 per cent of face value of such claims from the county funds in its possession as such depository. At the time of this transaction there were a large number of county warrants outstanding and unpaid of the same class or classes as the warrants discounted, some of which were several years older than the warrants so discounted and many of which the depository had declined to pay for lack of funds. Has the depository the right to prefer the claims discounted by it as a banking institution regardless of prior registered claims or of prior claims which had been presented for payment and not registered as required by law?"

In answer thereto, I beg to advise you as follows:

The depository for the county funds in counties of 50,000 or under, by Act of 1915, page 348, is "charged with all the duties and subject to the same liabilities in so far as the safekeeping and paying out of the funds of the several counties are concerned, as are now (September 15, 1915) imposed by law upon county treasurers." These duties and liabilities are dual extending to the proper paying out of the funds as well as safekeeping. Also a safekeeping of the funds includes also a proper paying out, as an improper payment is the opposite to a "safekeeping."

The decision in First National Bank of Abbeville vs. Terry, Briggs & Co., 203 Ala. 401, has the following to say:

> "The following provisions of Section 5 of the Act of 1915 (General Acts, page 349) imposed upon the then depository the duty to meet the demand for payment, just as would have been the county treasurer's duty had that office not been abolished and had the demand been made upon the

county treasurer (provided, of course, the demandant was otherwise entitled to have payment made from such special, so pledged fund), viz.: "The bank or banks so designated as depositories for county funds shall be charged with all the duties and subject to the same liabilities in so far as the safekeeping and paying out of the funds of the several counties are concerned, as are now imposed by law upon county treasurers."

The duties of the county treasurer are set forth in Section 211 of the Code of 1907, Subdivisions 1 and 2 of Section 211 were amended by Act of 1919, p. 860, which so far as applicable to this question reads as follows:

"1. To receive and keep the money of the county and disburse the same as below stated.

"2. To pay out of the general fund of the county, on presentation and without being audited and allowed by the court of county commissioners, all grand and petit juror certificates, and to pay all other claims against the general funds that have to be allowed and audited only after they have been audited and allowed and a warrant has issued therefor, but only to the extent so allowed, any warrant to the contrary notwithstanding, and in making payments from said fund he shall observe the order of preference as prescribed by Section 153 of this code."

Section 211, Subdivision 4, reads as follows:

"To number and register in the order in which they are presented, all claims against the general fund which have been audited and allowed by the court of county commissioners as claims against such fund, such register showing the number of the claim, the date presented for registration, to whom allowed, when allowed, the character of the claim and the amount thereof; and except as otherwise provided by law, to pay the same in the order of their presentation. He must in like manner, register, and pay all claims allowed against a fund raised for a special purpose."

Subdivision 5 relates to claims against the fine and forfeiture fund, and contains the following words as to payment:

> "And to pay the registered claims of state witnesses in the order of their registration, and whenever there is a surplus of such fund, over and above the sum required to pay the registered claims of state witnesses, he must apply such surplus to the payment of the claims of officers of court in the order of their registration."

The above are duties which the depository is bound to observe and perform. The bank acting as depository has no right to purchase claims and pay them before making payment of other prior claims unless there is enough money on hand to pay said claims purchased and all registered claims having priority, as allowed by Section 212 of the Code of 1907.

It is not the policy of the law that the depository will withhold payment of claims in order to use the money of the county or, in order to depreciate the value of claims in order for the bank acting as depository to buy the claims at a discount.

The Supreme Court in the case of Rhodes vs. Marengo County, 88 So., 850, said:

> "To the duties and obligations of the county treasurer, the county depository, appellee, has succeeded. The provisions of the statute affecting the means and order of payment became a part of the contract between the parties. The obligation of the contract, including the remedy for its enforcement, could not be impaired by statute, and, such being the case, its obligation could not be impaired by the county authorities, exercising only such powers as are delegated to them by the legislature."

So clearly, if the depository postpones payment of a claim, when, by law, and the condition of the treasury, it is due to be paid, this is an impairment of the obligation between the county and the lawful holder of the warrant that the law will not sanction.

Yours very truly,

O. B. CORNELIUS,

Assistant Attorney General.

July 24, 1924.

Hon. F. C. Marquis, Member,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of July 10th, addressed to the Attorney General, has been referred by him to me for reply. You write as follows:

"We have a concern in Florence, Ala., who have taken out and paid for a plumbing or gas fitters license as prescribed in Schedule 90, License Acts 1923, page 48. This concern in addition to plumbing makes estimates on and bids on furnishing and installation of plumbing fixtures and materials and takes rather large contracts which are confined to plumbing contracts. However, their gross yearly business runs between five and seven thousand dollars.

"Please advise, in your opinion, would the said company be liable for contractors' license as provided in Schedule 34, page 15, License Acts 1923, in addition to the regular license taken out by said company as plumbers' or gas fitters' license."

In answer will say that Schedule 87 requires all master plumbers doing business as such to take out a license as master plumber. Under this license a master plumber may run a plumbing shop and do any kind of plumbing work.

Schedule 34 is for a license on contracting, and "when the contracts for doing any work on or in any building or structure requiring the use of * * * metallic piping, tin or lead" amounts to five thousand dollars or more, he must then take out a license for contracting in accordance with said Schedule 34.

Yours very truly,

A. A. EVANS,
Special Assistant Attorney General.

July 25, 1924.

Hon. E. J. Chestnut,
Judge of Probate,
Centre, Alabama.

Dear Sir:

In answer to your letter relative to the division of your county into commissioners' districts, I beg to advise you that on an investigation of the law applicable to your county, I find the Act authorizing the dividing of your county into districts appears in the Acts of 1878-79, p. 208, Section 1, and reads as follows:

> "That the commissioners courts of Cherokee counties (others included) be authorized and are directed to lay off said counties into four commissioners' districts as near equal in population as may be.
>
> "Sec. 2. That the qualified voters of said counties shall elect one commissioner for each district, whose term of service shall commence at the expiration of the terms of the present incumbents and said commissioners shall reside in the district for which they are severally elected."

I am of the opinion that the commissioners court may not remove one part of a district into another district by changing the lines merely to please petitioners, but that they could only do so in conserving or maintaining the equality of population.

A change in the lines would not affect the rights of the voters in a general election, as the commissioners are elected by the voters of the county and not from a smaller division of the county.

Hoping what is here said fully answers your inquiry, I am

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

July 25, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General is in receipt of your request for an opinion on the following question:

"If one of the members of the court of county commissioners before the judge of probate signs the name of a claimant to an account which the county is supposed to owe, and which is known to the judge of probate, who affixes his signature to the jurat, and files the claim, which is presented to the commissioners court, and the claim is allowed and ordered paid, is the payment legal?"

Code Section 147 (1907) provides:

> "No claim against the county shall be passed upon or allowed by the court of county commissioners unless it is itemized and sworn to by the claimant, or some person in his behalf having personal knowledge of the facts."

It has been held by the Supreme Court that unless there is a statute which requires the signature of the affiant to be affixed, that the mere omission of the signature will not render the affidavit invalid, as "an affidavit is a statement of facts under oath reduced to writing and certified to by the officer before whom the same is made. It is usually, though not necessarily, unless required by statute, signed by the affiant."

Albert Holman vs. State, 144 Ala., 95;
Albritton vs. Williams, 132 Ala., 647;
Watt vs. Womack, 44 Ala., 605;
Hyde vs. Adams, 80 Ala., 113;
Culver, Trustee & Co. vs. Guyer, 129 Ala., 602.

If the statute requires subscription by the affiant, it is irregular and insufficient without it.

Savage vs. Atkins & Co., 124 Ala., 378.

If the name of the affiant had been omitted from the affidavit, this, alone, would not have rendered it invalid, but since it purports to be the act of the affiant, and not that of his agent, it is not a compliance with said Section 147.

> "Where an affidavit is made by one person in behalf of another, the fact of agency must be shown in some way, but generally it is deemed sufficient if the fact of agency be stated by way of recital."
>
> Birmingham Realty Co., et al., vs. Barron, et al., 150 Ala., 232.

In this instance the claimant did not by himself, or by some person in his behalf, having personal knowledge of the facts, swear to the itemized account. The commissioner, if he had knowledge of the facts, could have made the affidavit for the claimant, and, the claim, if passed and allowed by a majority of the court, other than this commissioner, would have been passed legally, but, as stated in the question, I do not think the claim was properly allowed by the court.

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

July 25, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General is in receipt of your request for an opinion on the questions below noted, and has referred the same to me for reply.

It appears from the statements in your request, briefly stated herein, that the judge of probate and his wife, as appears from the minutes of the court of county commissioners, are holders of a warrant issued by the said court against the general funds of the county on August 17, 1923, for the sum of $285.81. Warrants

against the county issued at a prior term or terms of the court were exchanged for the interest-bearing warrant as follows: Claims issued to the judge of probate for recording minutes of the court and presiding over the commissioners court, $170.20, and claims for the support of the poor aggregating $54.25, and for cattle dip and tick eradication work, $6.49.

The above transaction appears to have been entered on the depository's record as an item of receipts under the head of a loan from the wife of the judge of probate and charged out as a disbursement.

The warrants above mentioned did not bear interest, but the warrant for $285.81 bears 7% interest from August 15, 1923, to date of maturity, January 1, 1926. The minutes of the court recite that said warrant is issued to the said Mrs. ———— in payment of the amount due her for money borrowed for the payment of debts or other obligations already incurred for necessary expenses of the county. It is further ordered, that a sum equivalent to $285.81, together with the interest thereon for a period of 28 months and 15 days be, and the same is hereby appropriated from the general fund of the county to come into its hands from taxes due and payable October 1, 1925, to satisfy and discharge the said warrant and a lien is hereby fixed upon the said moneys for the satisfaction of the said warrant and so much of the general fund as may be necessary is hereby set aside for the satisfaction and payment of the said indebtedness.

The same minutes further recite that the total interest-bearing warrants outstanding aggregate a total of $19,721.71 at the time of the issue of this warrant, bringing the total to $20,007.52, exclusive of interest, and made payable during the tax year in which this warrant is made payable. But the minutes nor the statements contained in your letter do not show the "aggregate amount of warrants outstanding at any time and payable during any tax year.

In effect you ask the following questions:

1. Does this transaction violate the provisions of Chapter 261 of the Code of 1907? If so, is the warrant void? Assuming the loan to have been made by someone not connected with any county officer, are all the claims listed above such as are em-

braced in the term "necessary expenses of the county" in the Act of 1920, providing for the issuance of interest-bearing warrants?

Does the Act of 1920, relating to refunding the indebtedness of the county authorize transactions like the one hereinbefore described which are in fact but the conversion into interest-bearing warrants of the ordinary warrants issued to the tax assessor for making the land and lot books to the clerk, sheriff and judge of probate for their *ex officio* allowances and for other statutory allowances to public officers?

Were the warrants which were retired by the issue of the warrant for $285.81, in whole or part, preferred claims against the county and was it the duty of the officers of the county to retire them from funds set apart for the purpose of paying preferred claims, and if so, could the court of county commissioners legally carry the indebtedness composing the preferred claim into and make it the basis of an interest-bearing warrant against the county.

Answering your inquiries I am of the opinion that the law governing this warrant and indebtedness is as follows:

The authority of a Court of County Commissioners to issue interest-bearing warrants is supported by the decision of the Supreme Court in the case of Marengo County vs. Barley et al., 96 So. 753, and in cases there cited. Aside from the authority contained in the Acts of 1920, page 10, the authority to issue interest-bearing warrants in payment of an indebtedness represented by a non-interest-bearing warrant such as the ones taken up by the issue of this interest-bearing warrant, is governed by the principles of law announced, and supported by the authorities therein cited in an opinion of the Attorney General as appears in Reports of Opinions of the Attorney General of 1920-22, page 116.

Considering the decisions of the Supreme Court announcing the principle that an agreement to pay interest on a past transaction not based on a valuable consideration is without authority of law, I am of the opinion that under the general principles of law the Court of County Commissioners were without authority of law to take up the outstanding warrants aggregating $285.81, and issue a warrant due at a later period of time, and drawing inter-

est for the reason that the agreement to pay interest, is not supported by a valuable consideration. It is therefore a *nudum pactum* in so far as the amount of the interest due or to be due on the principal sum of $285.81. Yet, this want of consideration does not extend to the principal sum of the indebtedness represented in this warrant.

What is above said, is based on general powers of the county outside of and beyond the authority granted and contained in the Acts of 1920, page 10. In that Act the power to issue interest-bearing warrants is confined to the instances therein stated. Court of County Commissioners of DeKalb County et al. vs. McCartney, 207 Ala. 230. The instances recited in the Act are as follows:

> For the settlement of any debt or other obligation "incurred in the construction or maintenance of public roads or the creation of necessary public buildings for the county and other necessary expenses of the county" or "money borrowed for tick eradication," or, "as security for money borrowed for the payment of any such debt, or other obligation," and *"to issue and sell such warrants to secure funds for the payment of any such debt or obligation."*

None of the instances stated in said Act, in my opinion, will authorize and sanction the county issuing interest-bearing warrants by the county to cover ordinary debts incurred as expenses of the county and require the county for a number of months to pay a high rate of interest on debts that might be, and should be, liquidated in the ordinary course of events from current revenues and without interest.

The Acts of 1919, p. 1110, amending Section 153 of the Code of 1907, makes the following preferred claims against the county:

> "The compensation of members of the court of county commissioners as shown by the certificates issued to them; the compensation of the probate judge; * * * and for the payment thereof it is the duty of the county treasurer to set apart a sufficient fund from the moneys of the county. Claims for the support of the poor are to be next preferred."

Undoubtedly it was the duty of the treasurer to set apart sufficient funds from the general funds for the years in which the above mentioned claims accrued against the county to pay the same. Allen vs. Watts, 88 Ala., 497.

The said claims of the judge of probate, aggregating $170.07 and the claims for the support of the poor aggregating $54.25, were preferred claims and due to have been paid on presentation. The indebtedness as represented by this claim to the extent of $225.32 was due to be, and doubtless would have been paid on presentation. Therefore, the court of county commissioners were without authority of law to require the county to pay interest on those claims to this extent.

Regarding Chapter 261 of the Code of 1907, I am unable to say whether or not Section 7430 of the code was violated by this transaction. If the judge of probate directly or indirectly by himself, or through another, purchased, dealt or trafficked in any manner in either of said claims, and which dealing or purchase was not the result of receiving in good faith said claims in payment of a debt due him by the owner of said claim, then, in that event, Section 7430 of the code was violated. An acquiring of either of said claims, the foundation of the interest-bearing warrant by him, directly or indirectly; or an acquiring by his wife of either of said claims by her for the judge of probate, in contravention of said statute would vitiate the transaction.

Wadsworth vs. Dunnam, 117 Ala., 661;
Armstrong vs. Walker, 200 Ala., 364.

It is not the acceptance in good faith by the officer of a claim against the county on a debt due him that the statute denounces, but the buying, dealing or trafficking in the claims by an officer. If the facts were as stated in the latter part of the above sentence, no recovery could be had on the warrant. If his wife did the purchasing, dealing or trafficking in the claims, not for herself but for her husband, under the guise of transacting business for herself, there could be no recovery on the warrant. But, if she purchased the same for herself with her own funds, this would not be a violation of any section of Chapter 261 of the Code of 1907.

If the transaction was not in violation of Section 7430 of the code, it is my opinion the part represented as preferred claims cannot participate in interest for the reason before stated.

I am further of the opinion that no part of the indebtedness was such as mentioned and contained in Section 1 of the Act of 1920, p. 10, unless items for money borrowed for tick eradication, if any. If this was actually borrowed from Mrs. ————, and the warrant is not in contravention in whole or part, as to Section 7430, for the reasons before stated, the claim would be valid, and would draw interest, but not as to the sum of $225.52.

Hoping the above sufficiently answers your inquiries, I am

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

July 28, 1924.

Prof. P. B. Pepper,
Superintendent of Schools,
Greenville, Alabama.

Dear Sir:

Your letter of the 25th instant contains the two following inquiries: 1st. May the entire county be made into one school district for the purpose of levying the three-mill school district tax? 2nd. If the county cannot be made into one such school district, may it be divided into two such districts?

Amendment XIX to the Constitution allows two taxes to be collected:

(1) A special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct. The provision of the Constitution pertinent to the questions under consideration is as follows, to-wit:

> "The several school districts of any county in the state shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of

taxable property in such district for public school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part or such other school districts now existing or hereafter formed as may be approved by the county board of education; and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district."

Political Code, 1923, p. 429.

This provision was not meant to allow a county tax of six mills for school purposes. * * * "A school district is not the county. It is a legal subdivision of the county, but it is a district entity." Bates vs. School Dist. No. 10, etc., 45 Wash., 498.

Your first question must, therefore, be answered in the negative.

2nd. May a county be divided into two school districts? The quoted constitutional provision vests the power to levy the three-mill school district tax in "the several school districts of any county." It is necessary to ascertain what character of a subdivision of a county a school district is within the meaning of this constitutional provision. Our Supreme Court has stated the following rule relative to the interpretation of new constitutional provisions, to-wit:

"In the light of former law and existing system, new constitutional provisions are to be read and interpreted, if their real meaning is ascertained and the intent of the law givers carried into effect."

Taylor vs. Wood, 52 Ala., 474;
State vs. Birmingham, 182 Ala., 475; 62 So., 77.

For many years in this state the subdivision of the county to which was committed local control of school affairs was the township. This particular subdivision was adopted because it was the unit to which belonged the sixteenth section fund. Civil Code, 1886, Section 966; Civil Code, 1896, Section 3560. Such arti-

ficial boundary lines for school districts, established without regard to the convenience of the people to be served, were found so impracticable that in the year 1903 the legislature created a county board to redistrict each county. This Act provided that the county should be divided into public school districts according to centers of population and natural barriers, and that if practicable to place a public school within two and one-half miles of each child of school age. No district was to be formed which would contain less than fifteen children. Section 4, Acts 1903, p. 290. The chief purpose of this act was evidently to place the school so far as possible within convenient reach of the population to be served by it. The next Act of the legislature relative to school districts is found in the Code of 1907. The county board of education was given the power to rearrange the boundaries of old districts or create new districts by a procedure therein prescribed. Code 1907, Section 1691. Each incorporated city or town was made a separate school district. Code 1907, Section 1693. This gives us the legislative history of the school district as the system existed at the time of the adoption of the constitutional amendment vesting in school districts the power to levy and collect the three-mill tax. The constitutional provision itself adopts the character of school district in existence at the time of the proposal of such constitutional amendment, for it provides, "that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part or such other *school district now existing* or hereafter formed as may be approved by the county board of education."

Section 4 of Article 12 of the present school code which was adopted in 1919, provides, "In order to make it possible to work out a system of local tax units adapted to the needs of the whole county, the county board of education of its own initiative shall fix the boundaries of any school district within the jurisdiction in which it is proposed to levy a local school tax," and this same section provides "that any city of two thousand (2,000) or more inhabitants, according to the last or any succeeding federal census shall constitute an independent school district for the purpose of levying the tax authorized." In other words, the legislature itself created such towns school districts and granted the power to the county board of education to control districting other than

such incorporated cities. School Code, p. 47, Section 4. No authority under this code is given the county board of education to alter the boundaries of such cities so as to enlarge or diminish the same as a school district. By an Act approved September 29th, 1923, an attempt was made to authorize the county board of education to consolidate with a city school district adjacent territory lying without the corporate limits of such city. The title of this Act so far as relates to the matter under consideration is as follows, to-wit: "To amend * * * Article 12 by adding Section 5 1-2 * * * of an Act entitled," etc. Acts 1923, p. 693. Section 5 of the Act begins thus: "That Article 12 of said Act be amended by adding Section 5 1-2, which shall read as follows:" etc. This provision of the Act is, in my opinion, violative of that part of Section 45 of the Constitution which provides "that no law shall be revived, amended or the provision thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length." Article 12 was not "published at length," and the extension attempted by adding Section 5 1-2 is void. Bates vs. State, 118 Ala., 192. It follows that incorporated cities of two thousand population or over are still school districts by legislative decree, and no power rests in the county board of education to change the boundary of such districts.

To the county board of education is committed the power of determining the boundaries of school districts lying without the incorporated limits of cities of two thousand or more population. In the exercise of the discretion of the county board of education in fixing the boundaries of such district, the courts will not interfere unless it appears that the fixing of the boundaries of such district was arbitrarily violative of all things conducive of serving the best educational interest of the people of the district. With the advent of good roads and improved transportation facilities it is reasonable to suppose that the area that should be included in a school district so as to serve best the educational interests of such territory will constantly become larger. Determining of such is committed to the county board of education and its action is final so long as that action is determined by the consideration of the best educational interests of the territory to be served.

It follows that a county cannot be divided into only two school districts if it contains two incorporated cities of two thousand population or over, as each of such cities is a separate district which cannot be consolidated with other territory; that the county board of education, governed by the principle hereinbefore stated, is empowered to district that part of the county not embraced within the corporate limits of such cities.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

July 30, 1924.

Hon. W. S. Keller, Chairman,
State Highway Commission,
Capitol.

Dear Sir:

Replying to the inquiry contained in your letter of the 28th instant relative to turning over to Montgomery county the sum of twenty-five thousand ($25,000.00) dollars upon a contract being entered into between Montgomery county and the State Highway Department of Alabama, for the maintenance of what is known as the Carter Hill and Mt. Meigs roads, I beg to advise as follows:

The Highway Act approved September 24, 1923, provides that "the State Highway Department may enter into contract with any of the counties of this state, or with any of the municipalities of this state, as it may with individuals, firms or private corporations to do any work in the construction, repair or maintenance of the roads, bridges or highways in this state."

In the event a county enters such a contract, a bond is required the same as if the contract was with a private corporation or individual.

Section 13, Acts 1923, p. 376.

This same section authorizes the State Highway Department to make partial payments to the contractor performing any road or bridge work as the work may progress, but states that not more

than eighty-five per cent of the contract price of the work shall be paid in advance of the full completion and acceptance of the work.

Although the wording of this provision indicates that it applies to the construction of a highway, yet the words are not limited to that particular character of the contract, but include all contracts for any road or bridge work.

Whether or not the twenty-five thousand ($25,000.00) dollars could be turned over to Montgomery county in a lump sum depends upon the facts and the agreement entered into by the State Highway Commission of Alabama and said county. If the contract contemplates that the expense of maintenance of these roads will be largely in excess of twenty-five thousand dollars, and that the initial expenditure by the county to recondition such roads will be in a sum of over twenty-five thousand dollars, then the highway commission would be authorized to make a payment of eighty-five per cent of the estimated work done by said county.

In my opinion this would comply with the spirit of the provisions contained in the Highway Act, inasmuch as payment would be made on the work during its progress and the state would be protected by the bond executed for the future performance by the county of its obligations to expend its own funds for the future maintenance during the period covered by the contract.

The copy of the resolution passed by the Board of Revenue of Montgomery county is herewith returned.

Yours very truly,

HARWELL G. DAVIS,
Attorney General.

Copy to:
Hon. J. W. Heustess,
Montgomery, Ala.

August 1, 1924.

Hon. John W. Abercrombie,
Superintendent of Education,
Capitol.

Dear Sir:

Section 31 of Article 23 of the School Code, Acts 1919, p. 639, provides as follows:

> "* * * All bids and contracts for school books shall provide for the purchase by municipalities, districts and counties which supply free school books of all such books at the regular contract price, less the commission allowed the agents or depositors."

Section 37 of the same Article is as follows:

> "In the event any city or county is furnishing free text books at the time any regular contract is entered into with any publisher to supply text books for the use in the public schools of the state, it shall be stipulated in such contract that said city or county shall have the right to purchase such text books direct from publishers and at the same prices and with the same exchange privileges as such text books are furnished to the state during the life of such contract. Provided, that the aforesaid privilege shall apply only on orders for freight shipments of one hundred pounds or more."

The text book contract with the various publishers of school books contains the following provision relating to this matter:

"The party of the second part agrees to furnish at the regular contract price, as set out herein, less the commission allowed to agents or depositors, to municipalities, counties and school districts such publications as are furnished free to the pupils of the schools of such municipalities or counties or school districts, provided that the said privileges shall apply to any city, county or school district furnishing free text books at the time this contract is executed and provided further that all orders for books shall be for freight shipments of not less than 100 pounds."

The question presented for determination is the price at which public schools at Birmingham furnishing free text books can secure from the publishers such text books, it being contended on the one hand that the city furnishing such free text books was entitled to secure the benefit only of the commission allowed the agent or depositor which retailed the books to schools, while it is contended on the other hand that the City of Birmingham has the right under the law and the contracts with the publishers, to buy directly from the publishers and secure the benefit of the commission allowed both the retailing agent and the circulation distributing agency in the state.

The provisions of the law contained in the above quoted sections are not entirely free from ambiguity. Applying the rule of construction which requires that each section be given a field of operation without conflicting or nullifying the other section, if possible to do so, (State *ex rel., et al.*, vs. Bracken, 154 Ala., 151; 45 So., 841) I am of the opinion that the clear legislative intent evidenced by both of these provisions is to give cities furnishing free text books to students, the privilege of purchasing "such text books direct from the publishers" at the regular contract price less the commission allowed the agents of the publishers for the purpose of compensating such agents for the expense of distributing and handling such text books. This is the provision that is contained in the contract. In construing the meaning of a contract, the law requires that all contracts be construed against him who enters into the obligation and undertakes the performance of the act.

Ashley vs. Cathcart, 159 Ala., 474; 49 So., 75;
Seay & Hendrick vs. McCormick, 68 Ala., 549.

Applying this rule of construction, the publisher undertook in this contract to furnish municipalities furnishing free text books, such text books at the regular contract price less the commission allowed the agent or depositor. The undoubted intention was to give the city the right to deal directly with the publishing house and to eliminate all costs of the middle man and of distributing agencies of the publishers whether wholesale or retail distributing agencies. A construction which would hold that only

such commission or compensation as the publisher saw fit to allow the retail agent should be the commission intended by the provisions of the law in the contract, would permit the publisher to entirely avoid the allowance of any benefit to cities furnishing free text books and thus to nullify the intention of the law.

In my opinion, both under the provisions of the law and the contract, cities furnishing free text books at the time of the entrance of the company into the contract have the right to purchase in not less than one hundred (100) pound lots, text books directly from the publisher and that the publisher must furnish such books at the contract price less the expense, which he allows to his agents for the distribution of such text books.

Yours very truly,

HARWELL G. DAVIS,
Attorney General.

August 7, 1924.

Hon. R. E. Adams,
Judge of Probate,
Brewton, Alabama.

Dear Sir:

The Attorney General has received the request of the court of county commissioners of Escambia county, inquiring whether Escambia county, Alabama, and its court of county commissioners have power under the new Code of 1923 to build a fence between Escambia county and the State of Florida and along the boundary line of Florida between the town of Flomaton and to the Covington county line for the purpose of preventing tick infested animals in Florida from coming into this state and into Escambia county. This request has been presented to me for reply.

The Act of 1915, page 341, Section 2, reads as follows:

> "That each of the counties of this state are authorized and empowered to make such appropriations for the purpose of promoting or encouraging the work of tick eradication in such county in any manner as may be deemed necessary or

advisable within the discretion of the board of revenue, court of county commissioners, or other like governing body of any such county."

The above provision is broad enough for the court to make an appropriation for promoting tick eradication in Escambia county by building a fence on the boundary line of the State of Florida, if the court of county commissioners deems it necessary or advisable to appropriate money to build said fence in the eradication of ticks in the county. See Bice, County Treasurer vs. Foshee, 97 So., 764. The above Act is in force at least until August 7, 1924, when the new code becomes effective. After the new code is effective the section that will be in force, and under which the commissioners may make an appropriation is Section 1233. This appeared as Section 765 of the Code of 1907, which at the present time is superseded by Acts of 1915, page 123.

Hill vs. Cameron, *et al.*, 194 Ala., 376.

The commissioners court is granted this discretionary legislative authority, which, in the absence of fraud, corruption or unfair dealing, their acts will not be controlled by any judicial tribunal.

Henry vs. Rogers, 97 So., 427.

Yours very truly,
O. B. CORNELIUS,
Assistant Attorney General.

August 8, 1924.

Hon. R. J. Staggers, Chairman,
Court of County Commissioners,
Hayneville, Alabama.

Dear Sir:

Your letter to the Attorney General, as follows:

"Lowndes county has a high school at Ft. Deposit. It wishes to establish another high school at Hayneville. Is it lawful for the court of county commissioners of Lowndes county to appropriate out of the general funds of the county one thousand dollars, or other amount, to assist in the purchase of equipment for said high school at Hayneville?"

has been referred to me for reply, and I beg to advise you as follows:

I have examined the following Acts relating to the subject of appropriations by the court of county commissioners to high schools as follows:

Act of 1909, p. 259, "It shall be lawful for the commissioners court to appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of these state schools known as county high schools, established in the several counties of the state under an Act of the legislature," etc.

Acts of 1919, p. 567, Article 24, on page 640, as follows:

"Section 1. The state board of education shall have the authority to locate one high school in each of the counties of the state, which shall comply with the minimum requirements prescribed by such board."

"Section 3. * * * Boards of revenue and courts of county commissioners are authorized to donate funds for the maintenance and support of county high schools * * * and the state board of education shall have the power to locate another high school in the county in which a county high school has been discontinued, upon the fulfillments of the conditions prescribed in this Article."

"Section 9. * * * Commissioners court, board of revenue or other governing body is authorized to donate or appropriate funds to aid in the construction or improvement of necessary buildings, and the maintenance and support of county high schools."

Article 5 of the same Act, Section 20:

"The public schools of the county shall include elementary schools, that is, grades one to six, inclusive, junior high schools, that is, grades seven to nine, inclusive; and senior high schools, that is, grades ten to twelve, inclusive."

Also, I have examined the Act of 1907 authorizing the establishment of high schools in the state, Code of 1907, Sections 1861, 1862 and 1863; Acts of 1911, p. 324, and Act of 1915, p. 203, which do not contain any provision pertaining to the authorities of county commissioners to make appropriations to the high school.

The said Acts do not contemplate appropriations to more than one county high school in each county by the county, or the court of county commissioners or like governing body.

For this reason, I am of the opinion that as long as there is an existing county high school in your county, said board is without authority to appropriate the proposed sum from the general funds of the county.

Yours very truly,

O. B. CORNELIUS,
Assistant Attorney General.

August 9, 1924

Hon. S. H. Blan,
Secretary of State,
Capitol.

Dear Sir:

Replying to your inquiry of this date relative to the preparation of the ballot for the purpose of submitting to the qualified electors of the state the constitutional amendment proposed in Senate Bill 449 (Act 1923, p. 557), I beg to advise as follows:

Section 285 of the Constitution of 1901 requires that upon the ballots used at elections which submit a proposed amendment to the Constitution "the substance of or subject matter of the

proposed amendment shall be so printed that the nature thereof shall be clearly indicated."

The proposed amendment is contained in Section 1 of Senate Bill 449, supra. Section 3 of said bill is a legislative provision directing what shall be printed upon the ballot. This section differs in substance from the proposed amendment to the Constitution contained in Section 1 of said Act.

In my opinion, the provisions of Section 3, being different in substance from the proposed amendment, violate the provisions of Section 285 of the Constitution, and are, therefore, void.

The ballot should comply with the requirements of Section 285 of the Constitution, and, therefore, should contain the substance of the proposed amendment as set out in Section 1 of the Act.

Yours very truly,

HARWELL G. DAVIS,

August 9, 1924.

Hon. Page S. Bunker,
State Forester
Montgomery, Alabama.

My dear Sir:

Your request to be advised whether or not twenty thousand dollars of the state forestry fund can be appropriated by the state commission of forestry for the purpose of constructing a brick building to be used exclusively as quarters of the state commission of forestry.

The Forestry Act which was approved September 28th, 1923 (Acts 1923, p. 638), creates a state forestry fund, and provides that the particular fund "shall be used for no other purpose than for the administration of this Act, and the payment of the appropriations" made in said Act (Section 13).

This same section provides for the payment of all necessary expenses of the commission out of this fund.

Section 16 of this Act is as follows:

"The state forester shall be provided with an office at a point in Montgomery to be fixed by the commission, and the furnishings of said office shall be paid for upon the requisition of the secretary of the commission with the approval of the Governor."

There are many provisions of the law which require that an office in Montgomery be provided for a certain department or officer. None of these sections have ever been construed to authorize the expenditure of money appropriated for the expense of such department or officer to be used for the purpose of constructing permanent buildings. It will be noted that Section 16, *supra,* provides specifically for the payment out of the state forestry fund of the expense of the furnishings of said office, but makes no provision for the payment for the expenses of erecting a building to be used exclusively by the commissioner of forestry.

The state forestry fund by this Act is limited by unmistakable provisions to the expending of funds for the administration of the Act.

In my opinion, the Act clearly indicates no legislative intent to appropriate funds to be used in the erection of a building to be used exclusively by the commissioner of forestry.

Yours very truly,

HARWELL G. DAVIS,
Attorney General.

August 11, 1924.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

You ask the Attorney General, if, under Section 9023 of the Code of 1923, you are compelled to collect the twenty-five cents for attesting the satisfaction of mortgages, and pay the same to the county.

This matter has been referred to me for reply.

Local Acts of 1915, p. 374, says:

"The judge of probate shall receive an annual salary of six thousand dollars * * * which said annual salary shall be paid out of the county treasury in equal monthly installments at the end of each month."

Section 2:

"That when this Act goes into effect the cost, charges of courts, fees and commissions now authorized by law to be collected and retained by the several officers of Jefferson county above named, shall continue to be collected, but shall be paid into the county treasury of the officer collecting the same, as other moneys belonging to the county are paid."

Under the authorities of Waldrop, Clerk, vs. Henry, Treas., 207 Ala., 128; Jefferson County vs. Waldrop, 207 Ala., 606, and Jefferson County vs. Sandefer, 100 So., 71, this is not one which was authorized at the time of the enactment of the Local Act above cited and for that reason the judge of probate is authorized to collect said fee and is under no duty to pay the same into the county treasury of Jefferson county.

Yours very truly,

O. B. CORNELIUS.
Assistant Attorney General.

August 12, 1924.

Hon. Watkins M. Vaughan,
Judge of Probate,
Selma, Alabama.

Dear Sir:

Your letter of July 28th, 1924, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Our sheriff, Mr. Percy Dawson, has made application to our court of county revenue to be allowed the expense of the cook and jailer at the jail. As I find no express authority for paying this bill, I would be glad to have your opinion on the subject."

In reply will say that the state pays for the services of a cook in the jail. Section 4 of Act No. 528 (Acts 1923, p. 704, *et seq*) is as follows:

> "That there shall be allowed the sheriff for preparing and serving food the additional amount of twenty-five cents a day per capita for each prisoner up to and including five; twenty cents a day per capita for each prisoner in excess of five up to and including ten; and five cents a day per capita for each prisoner in excess of ten up to and including eighty-five, but there shall be no further allowance for any number of prisoners in excess of eighty-five. Provided, that the minimum allowance to the sheriff under this section shall be not less than a dollar a day."

The pay here allowed is, in my opinion, for cooking as well as otherwise preparing food for prisoners. I am, therefore, of opinion that this service cannot be paid for by the court of county commissioners, since the state pays for it, and there is no provision of law for the county to pay for it also.

I find no provision for the court of county commissioners paying the salary of jailer as such. The sheriff or his deputy is, in my opinion, the jailer.

If there is any special Act under which Mr. Dawson makes this request, please call our attention to it as such Act may have escaped our attention.

Yours very truly,

A. A. EVANS,
Assistant Attorney General.

August 19, 1924.

Hon. B. G. Wilson,
Solicitor, 17th Judicial Circuit,
Demopolis, Alabama.

Dear Sir:

Your letter of August 14th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply.

The facts, as you state, are that a boy said to be under fourteen years of age stands indicted in the circuit court of Marengo county for murder in the first degree, that the circuit judge referred the matter to the probate judge (judge of the juvenile court), and that the case was by said judge certified back to the circuit court. You ask the following two questions:

1. In case the boy is under the age of fourteen years, what can be done to him?

2. In case the boy is over the age of fourteen and not over eighteen, what can be done?

Section 3528 of the Code of 1923, Sub-Section (3), defines the term "delinquent child" to mean, among other things, "any child who while under sixteen years of age, violates any penal law of the United States or of this state," and then further on, we read that such children "shall be deemed wards of the state and entitled to its care and protection."

Section 3529 of said code provides that with the exception of the counties in which special courts are created having exclusive jurisdiction in such cases, the probate courts "shall have original and exclusive jurisdiction of all proceedings coming within the provisions and terms of this chapter, and shall have original and exclusive jurisdiction to hear, determine and adjudicate all questions and cases coming within said provisions," etc. Further on under said section, we find the following language: "But nothing in this section shall be so construed as to interfere with the prosecution of offenders as elsewhere provided for in this chapter."

Section 3539 provides for the transfer of juvenile delinquents from courts of criminal jurisdiction to the juvenile court, upon which, the said juvenile court shall "have jurisdiction of the cause and shall proceed to hear and determine the case so transferred to it, in the same manner as if the proceedings had been instituted in the juvenile court," etc.

The succeeding section, 3540, referred to in your letter, authorizes the judge of the juvenile court to transfer the care of the juvenile delinquent "to the jurisdiction of any other court in the county having jurisdiction of the offense with which the child is charged, there to be proceeded against according to law." However, this authority to retransfer the cause appears to be predi-

cated upon the fact that there has been a "thorough investigation or trial of its disciplinary measures" and that such investigation or trial has convinced the juvenile court judge that the delinquent child "cannot be made to live a correct life and cannot be properly disciplined under the provisions of this chapter." And furthermore, there appears a clause in this section, not found in the Act of 1915, which limits the juvenile court judge's authority to retransfer the cause, to cases where the deliquent child is *"more than fourteen years of age,"* this clause having been inserted in the amending Act of 1923 and therefore incorporated in the Code of 1923.

In the case of Berry vs. State, 209 Ala., 121, the exact age of the boy does not appear. However, it does appear that he was under sixteen years of age, and whether or not he was over or under fourteen years of age was immaterial in that case which proceeded on authority of the Act of 1915, in which, as aforesaid, the limiting clause does not appear.

In answer, therefore, to your first inquiry, it is my opinion that if the child was under the age of fourteen years, the judge of the juvenile court did not have authority to return the cause to the circuit court, but should have proceeded to exercise its jurisdiction, which, as quoted hereinabove, is by the statute made original and exclusive, and said court should have, upon determination of the boy's delinquency, proceeded to employ some of the corrective machinery made available to him by the statute. Therefore, the circuit court may enter an order retransferring the cause to the juvenile court for such disposition under authority of the statute, as the said juvenile court may in its judgment think best.

As to your second inquiry, I am of the opinion that if the boy was over fourteen years of age, Section 3540 of the Code of 1923, if complied with, is authority for returning the cause to the circuit court, on the ground that the boy has been found to be hopelessly incorrigible and should be subjected to punitive rather than disciplinary measures, and you may prosecute him for murder without further regard to the juvenile court Act, and the trial should proceed in the circuit court under the same rules of law as govern others charged with a capital felony.

In other words, and in conclusion, when the circuit court entered the order transferring the cause to the juvenile court, its

jurisdiction was suspended and the cause came under the jurisdiction of the juvenile court. The only authority we know for the cause coming back to the circuit court is the authority of the statute, and the authority of the statute for retransfer to the jurisdiction of the circuit court appears to be limited, as aforesaid, to cases where the boy is over fourteen years of age.

You raise no question as to the regularity of the proceedings of the juvenile court in transferring the cause back to the circuit court, and therefore in answering your second inquiry, I am assuming that said proceedings were regular.

A rather exhaustive treatise on the juvenile court Acts will be found in the case of Berry vs. State, 209 Ala., 120, and also in the case of Macon vs. Holloway, 96 So., 933, the latter case being under the Special Act of 1920, creating juvenile courts in counties of between 75,000 and 95,000 population. However, in neither of the Acts involved in these cases do we find the limiting clause above referred to in the present code.

Very truly yours,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 21, 1924.

Mr. John W. Phillips, Chairman,
Juvenile Court Commission,
Mobile, Alabama.

My dear Sir:

Your letter of August 5th directed to the Attorney General has just been handed me for reply.

You request a ruling in writing from this office on Section 2 of House Bill No. 832, page 335, of the Local Acts of 1923. And you especially desire information as to "the method of disbursing the public funds devoted to juvenile work."

For convenience I shall state your specific inquiries as follows:

1. Should the disbursement of said public funds for juvenile court purposes be made by the county treasurer on order of the juvenile court commission, or on order of the county board of revenue and road commissioners, "as at present"?

2. Is the juvenile court commission responsible for the disbursing of funds appropriated for maintenance of detention homes?

3. What are the commission's duties and liabilities in the matter of handling public funds appropriated for juvenile work?

I might answer all of your questions by saying that nowhere in the Special Act of 1923 do I find where the law has been changed as to the points upon which you desire information. Section 2 of the aforesaid Act, page 336, Local Acts of 1923, enumerates the duties of the said commission "(a) They shall elect the superintendent, matrons and other employees of the detention homes provided by local statutes for Mobile county or city, or general laws. (b) And they shall exercise such powers and duties as may be now or hereafter imposed by law, and such as are necessary or proper for performing the functions above stated."

Section 4 provides that a vacancy in the office of judge of the juvenile court shall be filled by the juvenile court commission, and his salary fixed by them, subject to approval of the board of revenue and road commissioners of Mobile county and the board of commissioners of Mobile where they fix said salary at more than $100.00 a month.

Section 5 gives this commission authority to fix the salary of the clerk of the said juvenile court, subject also to the approval of the board of revenue and road commissioners and board of commissioners of Mobile.

Section 6 provides for the election of the judge of the juvenile court commission. They shall also determine the number of probation officers, their salary, etc., but again their action is subject to the approval of the board of revenue and road commissioners.

Section 23, while not directly in point, but in connection with the foregoing, leads us to the conclusion that the law makers never intended to give the juvenile court commission any direct hold on the purse strings of the county or any authority in the matter of disbursing funds. It will be observed from a reading of this section that the approval of expense of transportation of juveniles is to be by the board of revenue and road commis-

sioners and the judge of the juvenile court, and not by the juvenile court commission.

Furthermore we note that the monthly statements required by Section 28, showing the items of expense, etc., are to be presented, *not* to your commission, but to the aforesaid board of revenue and road commission.

The Act of 1915, providing for detention homes, Local Acts 1915, page 30, which is expressly not repealed by the Act of 1923, gives your commission authority to fix the salaries of the employes of said home, but the *payment of said salaries* is left to the board of revenue and road commissioners.

Thus it would appear, that in the matter of expenditure of the public funds, the supervisory duties continue on the road commissioners and board of revenue, and not the juvenile court commission.

In conclusion, specifically answering your questions, and reasoning from the foregoing provisions of the law, we are of the opinion:

First, that no order from the juvenile court commission is required for the disbursement of funds for juvenile court purposes.

Second, that the said juvenile court commission is not responsible for the disbursement of funds appropriated for maintenance of the detention homes.

Third, that the juvenile court commission has no duties or liabilities in connection with the disbursing of the funds appropriated for juvenile court purposes, but that such matters continue within the province of the board of revenue and road commissioners as heretofore, and prior to the enactment of the 1923 law.

Yours very truly,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 22, 1924.

Hon. Thos. W. Coleman,
Judge of Probate,
Anniston, Alabama.

Dear Sir:

Your letter of August 21st, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In answer will say that, in my opinion, the license to peddle is personal to the one to whom it is issued and that no other person can peddle under such license. A peddler, under a license issued to him, cannot, in my opinion, carry on such business through agents or employees who have no license.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

August 25, 1924.

Hon. John A. Rogers, Chairman.
State Highway Commission,
Capitol.

Dear Sir:

The following resolution of the state highway commission is submitted to this office, to-wit:

"Resolved that the state will issue a bond payable June 30, 1925, without interest, to construct a road in Perry county from Sprotts to the foot of Joyce Hill, estimated with bridge to cost $100,000.00. This bond to be taken up when the state sells more of its issue of $25,000,000.00, in 1925. On roll call motion carried unanimously."

I am requested to advise you whether or not the state highway commission has authority to issue the bond provided by this resolution. This office has heretofore rendered an opinion to the state highway commission to the effect that the state highway commission was not authorized to borrow money or make loans. The only authority for issuing bonds of the State of Alabama, the proceeds from the sale of which are to be applied to

public highways, is the authority derived by virtue of the highway amendment to the Constitution and Sections 1377 to 1386, both inclusive, of the Code of 1923. These sections of the code contain the provisions of the Act of October 31, 1921, creating the bond commission with power to sell bonds authorized by the constitutional amendment.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

August 26, 1924.

Mr. Paul Ragsdale, Clerk,
Inferior Court of Bessemer,
Bessemer, Alabama.

Dear Sir:

Your letter of August 6th, 1924, directed to the Attorney General, has been referred to me for reply.

You desire an opinion from this office as to the constitutionality of the Act of February 8, 1895 (Acts of 1894 and 1895, p. 416), insofar as said Act limits the costs in garnishment cases to a minimum of two dollars and fifty cents. You desire to know whether you are to be governed by the general laws with reference to costs in garnishment cases or whether the Local Act in question shall operate in that particular field.

Section 96 of the Constitution of 1901 provides that "the legislature *shall not* enact any law not applicable to all counties in the state, regulating costs and charges of courts, or fees, commissions or allowances of public officers."

Section 104 of said Constitution provides that the legislature *shall not* pass a special, private or local law, etc., (24) "creating, increasing or decreasing fees, percentages or allowances of public officers."

The two aforesaid sections seem to cover much of the same ground, though Section 96 may embrace somewhat larger subject matter.

Section 168, as you observe, authorizes the legislature to provide what fees may be charged by justices of the peace and constables, "which fees *shall be uniform* throughout the state."

It will be observed that in each of these provisions the Constitution employs terms which look to the future, and not to the past. "Shall not enact" and "shall not pass" and "shall be" are prospective, and not retroactive, and where the Constitution does not expressly or by necessary implication repeal prior Local Acts inconsistent with and repugnant to these sections, we do not believe that it will be construed so to do, *ex proprio vigere.*

12 C. J. 725, "While a new Constitution is, by its very nature, intended to supersede a prior Constitution, it is not intended to supersede the entire body of statutory law. To the extent, therefore, that existing statutes are not expressly or impliedly repealed by the Constitution, they remain in full force and effect."

12 C. J., 728 (Section 101), "A constitutional provision that the legislature *shall not* pass local or special laws, *applies to future* and *not to past legislation,* and therefore, *does not operate as a repeal of such laws passed before the Constitution went into effect.*"

We, therefore, are brought to conclude that the Act of 1895, to which you advert, not being repugnant to the Constitution of 1875, and hence not unconstitutional at the time of its passage, was not rendered invalid by the subsequently adopted Constitution of 1901. It follows that inasmuch as the Act creating the inferior court of Bessemer (Special Acts 1915, p. 134, Section 5) provides that the fees and costs of the court, sheriffs and constables shall be the same as "provided by law" for cases in the "justice of the peace courts in Jefferson county," the costs in garnishment proceedings in the inferior court of Bessemer are those enumerated in the said Special Act of 1895, until the legislature repeals same.

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

August 27, 1924.

Mr. W. J. Ballard,
Sheriff of Randolph County,
Wedowee, Alabama.

Dear Sir:

Your letter of August 8th, directed to the Attorney General, has been referred to me for reply.

You make two inquiries; first, if you can put in claim against the county for five dollars for summoning jury in capital cases, and second, if you can make claim for two dollars for attendance on the county court.

The law of fees and costs is penal, and no fee can be demanded or accepted unless expressly authorized by the statute.

Pointing to the statute, therefore, and answering your first question, we are of the opinion that you may claim and receive the five dollars for summoning jury in capital cases, the same being expressly provided for in Section 3741 of the Code of 1923.

In answer to your second inquiry, we are of the opinion that you are also entitled to two dollars for attendance on the county court, this being expressly allowed by Section 3758 of the Code of 1923.

With regard to your observation that the last named item has been collected by some sheriffs all the while, we might add that this office has ruled that since attendance on the county court was by statute made one of the regular duties of the sheriff, he was not entitled to this fee. However, this ruling was made prior to the Code of 1923. This code, however, expressly authorizes the payment of said item, the provision appearing to have been inserted by the code committee. Therefore, though not authorized under the construction of the former statutes, we are of the opinion that the Code of 1923, which became effective on the 17th day of this month, expressly allows it.

Trusting that this answers your inquiries, I am

Very truly yours,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 28, 1924.

Alabama Public Service Commission,
Montgomery, Alabama.

In Re: Authority of law for passes over railroads to the commission and its employes.

Dear Sirs:

In reply to your request for opinion as to whether under the present laws of Alabama the railroads are authorized to grant passes intrastate over their lines, to employees of the commission as well as to the members of the commission, I beg to advise as follows:

If consideration be given to no provisions of the law except Sections 5372 and 5373 of the Code of Alabama of 1923 it would seem that the railroads had been prohibited from issuing passes to employees of the commission because said Section 5373 does not name such employees as being among those exempted from the operation of Section 5372.

But Sections 5372 and 5373 are not the only provisions of law dealing with this subject.

Section 9638 of the Code of Alabama of 1923 puts on the commission the duty of keeping "itself informed as to the condition, manner and method in which the (transportation companies) are conducted with reference to the security and accommodation of the public and their compliance with their charters and the laws of the state, etc." This section also provides further: "And the commissioners, in the performance of their duties, may pass free of charge on all the railroads of the state, and take with them free of charge any person in their official employment."

The same provisions set out in said Section 9638 were contained in Section 5656 of the Code of Alabama of 1907.

Said Section 5656 is a codification of Section 15 of the Act approved February 23, 1907, General Acts of Alabama, 1907, pp. 135, 140, which Section 15 reads as follows:

> "The commission shall have the authority to inquire into the management of the business of all transportation companies, and shall keep itself informed as to the condition, manner, and method, in which the same are conducted with reference to the security and accommodation of the public,

and their compliance with their charters and the laws of this state. They shall have the right and power to obtain from any such company full and complete information necessary to enable the commission to perform its duties and carry out the objects for which it was created. And the commissioners in the performance of their duties shall have the right to pass free of charge on all the railroads of the state, and to take with them free of charge any person in their official employment. And the commission shall have authority and is hereby required to enforce and require compliance with all the provisions of all laws now in force or hereafter enacted regulating railroads and other transportation companies or prescribing the duties thereof."

The provision of said Section 15 above quoted relating to the right of the commissioners and their employees to pass free of charge over the railroads of the state in the performance of their duties under the law relating to transportation companies has been the law since the Act approved February 26, 1881, General Acts of Alabama, 1880-1881, pp. 84, 91.

The law of Alabama providing for supervision and regulation of the transportation companies, since the first statute enacted on this subject, has contemplated that the commissioners would not be able to perform the duties imposed upon them without the aid of employees which was provided for. Since the enactment of the statute of 1881 above referred to, the law has provided that those employees should have the right to pass free of charge over the railroads along with the commissioners in the discharge of these duties.

Section 28 of the Alabama Transportation Act of 1920, General and Local Acts Special Session 1920, pp. 38, 92, made further provision for additional employees for the commission as the commission might deem necessary to perform the duties and exercise the powers conferred by law upon the commission. Said Section 28 is now Section 9617 of Code of 1923.

It is plain, therefore, that the legislature understood that the members of the commission could not unaided perform the duties which had been imposed upon them and so provision was made for the commission to employ such additional officers, account-

ants, engineers, experts, inspectors, clerks and employees, as the commission might find necessary to carry out the law. It is also plain that the legislature intended when they adopted the Code of 1923 that the commission and their employees should have the right to pass free of charge over the railroads of the state in the performance of their duties.

It must be noted that all those persons and classes of persons (except the members of the commission) who are mentioned in Section 5373 of the Code of 1923 are simply those to whom the railroads are *permitted* to grant free transportation or reduced transportation without violating the provisions of Section 5372. The railroads are not required by law to give free transportation or reduced transportation to any of these people. As a matter of fact, the railroads do not give free transportation to some of those mentioned in said Section 5373, such as ministers of religion, etc.

Under said Section 9638 of the Code of Alabama of 1923 the right to pass free of charge over the railroads of the state is given to the commission and its employees by law and it is not a case simply of lawful *permission* to the railroads to extend such free transportation.

Where repugnant statutes are incorporated in the same code the original statutes, their dates and even their judicial interpretation will be consulted, to ascertain the legislative intent.

Steele vs. The State, 61 Ala., 213, 218.

In the case cited, our Supreme Court said: "It is our duty to carry into effect the intention of the legislature, to be gathered from their language."

If there is repugnancy as between Sections 5372 and 5373 and said Section 9638 of the Code of 1923, it is clear when the history of these several sections is considered that it was the intention of the legislature of 1923 that the commission and its employees should continue to have the right to pass free of charge over the railroads of the state in the performance of their duties with reference to the supervision and regulation of transportation companies and that the issuance of passes to the commission and its employees for these purposes will not constitute a violation of Section 5372.

Section 10053 of the Code of Alabama of 1923, which is a part of Article 8 of said code dealing at length with the matter of rate regulation of the railroads, rebates, discrimination and with the granting of free transportation for persons and property, provides as follows:

> "Nor shall anything in this Article be construed to prevent such common carriers from giving free transportation or reduced rates therefor to any person authorized by law to receive such free transportation or reduced rates therefor."

In view of the above it is my opinion that the railroads cannot be subject to any liability, criminal or civil, for compliance with the provisions of said Section 9638 in furnishing passes to the commission and its employees. In fact, it is my opinion that it is the duty of the railroads of the state to furnish such passes to the commission and its employees in compliance with said Section 9638.

Very respectfully yours,
HUGH WHITE,
Special Assistant Attorney General.

August 28, 1924.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Montgomery, Alabama.

My dear Sir:

Your letter of August 18th, directed to the Attorney General, has been referred to me for reply. You make the following inquiries:

1. May a county contract be awarded to any person related either by blood or marriage within the fourth degree to one member of the court of county commissioners or board of revenue, if such member, though present, does not vote, or being present, votes against the award of such contract?

2. Could such a contract be awarded to a person so related to three members of such court or board, they being present and not voting?

3. May a county contract be awarded at all to a person so related to any member of the said court or board?

Your first question has been fully answered in an opinion from this office by O. B. Cornelius, assistant attorney general, to Hon. John A. Dickinson at Prattville, Alabama, dated November 16th, 1923, and to be found in Vol. 2 of the 1923 opinions from this office, page 681. In the said opinion it was held that if the related member of the court or board is not present, or being present, excuses himself and does not take part in the action of the court or board, such a contract may be let.

In answer to this inquiry, and to your second and third inquiry, we call attention to the unmistakable language of the Act (Act. 1923, p. 630). It is made unlawful *"for any member"* of the court or board to award to a relative in the stated fourth degree, any contract in which the county is interested, etc. The inhibition is directed, not to the court, but *to any member,* and the penalty is on *the member.* Therefore, we have to conclude that any contract which is awarded by the court or board aforesaid, is legal if a quorum of said board was sitting at the time of the vote, and the resolution or motion was passed by a majority of those shown by the minutes to have been present, *and none of those voting in favor of the action were related to the person to be contracted with.*

We can foresee that this construction renders the Act practically ineffective to accomplish what the law makers probably intended. However, this office will not undertake to read into the law something that is not there. In construing the Act we are bound by what the law makers clearly said, not by what they intended to say.

Specifically answering your second question, it is my opinion that if the three related members are by the minutes shown present, and hence are a part of the body at the time the action awarding the contract is taken, such award would be unlawful, for if they did not vote, then there would be only two votes out of the five in favor of the action, which would not be a majority.

In specific answer to your third question, it is my opinion that a contract may be awarded to a person related to a member or members of the court or board, provided a quorum was present at the time of the action, the motion or resolution was legally

passed, and the related member or members did not vote for or otherwise participate in the award of the contract. I believe this also answers your other questions.

Yours truly,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 29, 1924.

Hon. David W. Crosland,
Judge of Probate,
Montgomery, Alabama.

Dear Sir:

You request an opinion as to the proper interpretation to be placed on a portion of Section 9023 of the Code of 1923, your inquiry being made in the following language:

"I hereby request your opinion upon two questions arising out of the interpretation of Section 9023 of the Code of 1923:

"(1) Must 'an attorney-in-fact authorized by an instrument executed and acknowledged as is required of conveyance and filed for record' satisfy the mortgage or deed of trust in the presence of the judge of probate or his clerk, who in their official capacities must attach such satisfaction, and is the fee of 25 cents due in such cases?

"(2) If the attorney-in-fact satisfy the mortgage or deed of trust in the presence of the judge of probate or his clerk as witnesses, is it still possible to make the judge of probate the attorney-in-fact to satisfy mortgages, which is the common custom throughout the state?"

It will be observed that the provisions of Section 4898 of the Code of 1907 is contained as the first part of Section 9023 of the Code of 1923 without change. By uniform practice for years and the ruling of the Supreme Court the acts required by Section 4898 of the Code of 1907 could be performed by an agent.

L. & E. Lamar vs. Smith, 129 Ala., 418.

In other words, the entry of satisfaction on the record of a mortgage as required of the mortgagee by the provisions of Section 4898 of Code of 1907 could have been made by the mortgagee's attorney-in-fact. The adoption of the provisions of Section 4898 of Code of 1907 was as legislative adoption of the judicial construction which it had theretofore received.

> Wood-Dickerson Supply Co. vs. Cocciola, 153 Ala., 555; 45 So., 192.

We must, therefore, conclude that the provision of Section 9023 of Code of 1923, to-wit:

> "* * * or satisfaction may be made by an attorney-in-fact authorized by an instrument executed and acknowledged as is required of conveyances, and filed for record,"

was not included in the section for the purpose of authorizing the entry of satisfaction to be made by an attorney-in-fact, for, as has been seen, that right existed under the preceding provisions of the section. In my opinion the provisions of this section which are new to the Code of 1923 have for their purpose the making of a more certain and complete record of the satisfaction of mortgages, etc. The quoted provision, *supra,* was inserted into the section not to affirm the pre-existing right of making such entry by an attorney-in-fact, but it was included for the purpose of prescribing the method of executing the power of attorney and to require such authority to be placed of record.

The provision of Section 9023 of Code, to-wit:

> "Such entry must be witnessed by the judge of probate, or his clerk, who, in his official capacity must attest said satisfaction,"

requires the entry theretofore mentioned in this section to be thus officially attested that greater verity might be given this record. As this entry could be made in person or by attorney-in-fact, it follows that any entry of satisfaction made under Section 9023 of Code of 1923, whether made in person or by attorney-in-fact, must

be attested by the probate judge or his clerk, and "for making such attestation the judge of probate is entitled to a fee of twenty-five cents."

In reply to your second inquiry I do not think that the judge of probate could act as attorney-in-fact to make an entry relative to which the law imposes on him important official duties of attestation.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

August 29, 1924

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

Your letter of August 25th to the Attorney General has been referred to me for reply.

You refer to Section 3720 of the Code of 1907, with reference to fees of probate judges, and particularly that clause which reads: "Commissions on charter fees paid by corporations, 2 1-2% for the amount collected and paid over." You desire to know if probate judges are entitled to this fee under the new code.

In answer I will say that since the Code of 1923, Section 7285 makes no provision for the above said commission, we cannot read into the statute something that is not there. It follows that probate judges are not entitled to said commission under the new law. Section 7255 of the 1923 Code reads::

> "The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases *expressly* authorized by law."

I have examined Section 6971 to which you advert as possible authority for your receiving such commission, and I am of the opinion that the said section is in no way pertinent to your inquiry.

Your second inquiry is with reference to that portion of Section 9027 of the Code of 1923, which reads: "Enter the act of payment on the margin of the record of such conveyance in the manner *as required* by Section 9027." You desire to know what your duties are under said section. I presume you want to know whether or not you are required to attest the satisfaction of these liens, as in the case of satisfaction of mortgages. (Section 9023).

Specifically answering your question, it is my opinion that said Section 9027 does not place any such such duties on the probate judge.

I note your observation that in your opinion the law makers *intended* to say "Section 9023," where they said "Section 9027." I have examined the original manuscript of the new code to see if it was a typographical error on the part of the publishers, but find it was not. We have no more right to say the legislature meant 9023 than we have to say they meant any other section of the code. We have to construe, not what they may have meant to say, but what they have said.

Yours very truly,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 30, 1924.

Hon. John A. Rogers, Chairman,
State Highway Commission,
Capitol.

Dear Sir:

You request to be advised whether or not the state bond commission has authority to issue non-interest bearing bonds which shall mature within one year from the date of issuance.

What is known as the road bond amendment to the Constitution provides that "the state is authorized * * * to issue and sell interest bearing negotiable state bonds in an amount not to exceed the sum of twenty-five million dollars to be issued in such denominations, numbers and series and maturing at such times as may be provided by law; but such bonds shall bear a rate of in-

terest not greater than six per centum per annum payable semi-annually and shall be sold at a price not less than the par value thereof," Code of Alabama of 1923, Vol. 1, p. 433. Section 1381 of the Code of 1923 authorizes the state bond commission to execute, sell and deliver bonds "in such denominations, numbers and series and maturing at such times and bearing such rate of interest not exceeding six per centum per annum as may be deemed expedient by the bond commission."

It is clear that the term *such bond shall run* and the date of its maturity is a matter left entirely within the discretion of the bond commission. The provision of Section 1381 of the Code of 1923, *supra,* also leaves within the discretion of the state bond commission within the limits prescribed, the rate of interest such bonds are to bear. But does the constitutional provision authorizing the issuance of "interest bearing negotiable state bonds" require bonds issued and sold by the bond commission to bear interest?

It has been held that where the rate of interest is definitely fixed by statute that a sale of bonds at a less rate than that prescribed by statute does not invalidate the bonds.

Omaha Nat. Bank. vs. Omaha, 15 Neb., 333; 18 N. W., 63;
Cleveland vs. Spartanburg, 54 S. C., 83; 31 S. E., 871.

Provisions authorizing the issuance of interest bearing bonds at a maximum rate are the limit of the authority intended for the protection of the state against a higher rate of interest. It follows that the exercise of the authority to issue bonds within the limits prescribed by the statute or constitutional provision is legal. In my opinion, it was the intention of the constitutional provision for the bonds authorized to be sold at as low a rate of interest as possible. There would be no violation of the spirit of these provisions if bonds could be negotiated which did not bear interest.

Yours very truly,

HARWELL G. DAVIS,
Attorney General.

September 5, 1924.

Hon. W. B. Allgood,
Auditor,
Capitol.

Dear Sir:

In answer to your inquiry as to assessment valuation to be placed on real estate after the same has been bought in by the state at tax sale and before same is redeemed, will say that the valuation for assessment of such property is regulated by Section 269 of the Revenue Act, 1919.

It will be seen from a reading of this section, that where lands have been bought in by the state, at a tax sale, it is made the duty of the state auditor to report the list thereof to the tax assessor of the county and the tax assessor is thereupon required to place a fair valuation on such lands as are found to have been properly sold, and to enter such valuation and calculate the taxes thereon and return the list so valued and assessed to the auditor, *"who shall thereupon, and annually thereafter until such land is redeemed or recovered, or sold by the state, without further assessment, add the amount of the taxes so assessed on such valuation to the amount for which the lands were sold, and such proceedings shall have the effect of a due assessment of taxes against such land."*

The foregoing part of said Section 269 which is above underscored, is, to my mind, as plain as the English language can be made. There is no room for interpretation by an honest mind. The valuation placed by the tax assessor and returned to the auditor is the annual valuation thereafter for tax assessment of such lands until after such lands are redeemed.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

September 5, 1924.

Hon. W. B. Allgood,
State Auditor,
Capitol.

Dear Sir:

You request a ruling from the office of the Attorney General in accordance with the following request made of you by Mr. Phelan B. Dorlon, tax collector, Mobile county:

"Can you get a ruling from the Attorney General on Section 168 of the Revenue Code relative to the county paying the premium on the tax collector's bond? Does same apply to me this year?"

In reply to your request, will say that Section 3046 of the Code of 1923, which is Section 168 of Allen's Code, contains two changes from the law of 1919 (Revenue Act, 1919, Section 172). One is that said Section 3046 provides that the county shall pay the premium on the bond required and the other is that it does not permit a bond to be made with personal sureties. The question then is do these changes affect bonds that had already been executed in accordance with said Section 172 of the Revenue Act of 1919? In contemplation of law, the premiums on these bonds had already been paid when the Code of 1923 was adopted, and, in our opinion, there was no legislative intent to reimburse tax collectors for any part of the premiums so paid. In cases where bonds had been made with personal sureties, there was, in our opinion, no intent to require that a new bond should be given, for the balance of the term, with bonding company as surety. Both of these changes were, in our opinion, intended to take effect with reference to the next succeeding term of office of tax collectors commencing after the adoption of said Code of 1923.

Yours very truly,

A. A. EVANS,
Assistant Attorney General.

September 6, 1924.

Mr. Joe Patton,
Tax Collector,
Livingston, Alabama.

Dear Sir:

Your letter of September 4th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Please advise me whether or not I am (as tax collector) entitled to 2% on special local district taxes collected for 1924. I refer you to Article No. 3048, p. 1341, 1923 Political Code."

Your present term of office began before the adoption of the Code of 1923. The law operating at the time your present term of office began allowed you not less than one-half of one per cent and not more than one per cent, the exact amount to be determined by the court of county commissioners or board of revenue, for collecting special district school taxes. Revenue Act. 1919, Section 197; Act amending said Section 197, approved November 1, 1921, Acts 1921, p. 48.

The question then is can the legislature increase this fee for such services during your present term of office so as to become effective during your present term of office? In our opinion the Constitution of the State of Alabama forbids it. Section 68 of the Constitution as affecting this case is as follows:

> "The legislature shall have no power * * * to increase or decrease the fees and compensation of such officers during their terms of office."

The officers referred to are "any public officers." The tax collector is a public officer and is affected by said Section 68 of the Constitution. I am, therefore, of opinion that your fees for collecting special school district taxes is governed by the said Act of 1919, amending said Section 197 of the Revenue Act of 1919, and must be fixed by the court of county commissioners or board of revenue of your county at not less than one-half of one per cent and not more than one per cent of the amount of such taxes collected.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

September 8, 1924.

Mr. Paul Ragsdale,
Clerk of Inferior Court,
Bessemer, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 3, 1924, with further reference to the Local Act of 1895 regulating garnishment costs in Jefferson County.

You desire a ruling from this office, first, as to whether the Local Act of 1895 (Acts 1894-5, p. 416) was repealed by the General Act of 1911 (Acts 1911, p. 548) making constables' fees the same as sheriffs' fees except where amount in controversy is less than twenty dollars; secondly, whether or not the general provisions of the Code of 1923 with reference to fees (sections 7289 and 7290) repealed said Act of 1895, and lastly, whether or not Section 7295 of the Code of 1923 is unconstitutional as being repugnant to Sections 96, 104 and 168 of the Constitution.

The courts have been very reluctant to construe a general law to have the retroactive effect of repealing by implication a prior local statute. They diligently seek a field of operation for each, and if such can be found they will permit the prior local law to stand, though in effect it carves out a limited field of operation from the larger field in which the general law operates. In other words, the duty of courts is to harmonize statutes if possible.

The General Act of 1911, to which you advert, does not expressly repeal the Local Act of 1895 in question. Therefore it could only do so, if at all, by necessary implication. "If both Acts can, by any reasonable construction, be construed together, both will be sustained." (Cyc. of Law and Procedure, Vol. 36, page 1076.) And further, at page 1089, we find this language in connection with the above rule of construction: "In accordance with this rule, the presumption is that the General Act does not repeal a local or special statute, *although it contains a general repealer of acts inconsistent with it.*" And more directly in point, at page 1090, of the above said 36 Cyc., we read: "When the provisions of a general law, applicable to the entire state, are repugnant to the provisions of a *previously enacted special law, applicable in a particular locality only,* the passage of such general law

does not operate to modify or repeal the special law, either in whole or in part, unless each modification or repeal is provided for by express words, or by necessary implication." And further at page 1161 we read, "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a *part* of the same subject in a more minute and definite way, the two should be read together and harmonized if possible, with a view to giving effect to a consistent legislative policy; *but to the extent of any necessary repugnancy* between them, *the special will prevail over* the general statute." This appears to be another statement of the old principle, *"generalis specialibus non derogant."*

The Alabama cases have gone so far as to say that the general law will not repeal the prior Local Act, unless they are "irreconcilably inconsistent," and unless a field of operation cannot be found for each. But "where, as here, although relating to the same subject matter, one is local in its operation and the other general, each having a distinct field of operation, what might seem a conflict disappears in finding spheres for the operation of both. On such a case the later General Act does not repeal the former Local Act unless a repeal is *necessary to give the words of the General Act any meaning at all."* See:

State, ex rel, Tyson et al. v. Houghton et al., 142 Ala. 96.

In the case of *Derrick v. Hawkins,* 199 Ala. 122, the prior Local Act was upheld though the subsequent General Act had a precautionary repealing clause that, "all laws, *whether local, general or special,* in conflict with the provisions of this Act, be and the same are hereby repealed." Numerous authorities are cited. We would further refer to *Board of Revenue v. Johnson,* 200 Ala. 534, for similar holdings.

Therefore, it is my opinion, in specific answer to your first inquiry, that the General Act of 1911 does not repeal the Local Act of 1895, there being a field of operation for both, the particular county for the Local Act, and the rest of the State generally for the General Act. And what I have said with reference to the General Act of 1911 also applies to the general laws of the Code of 1923, and hence answers your second inquiry.

In answer to your third and last question as to whether or not Section 7295 is unconstitutional as being repugnant to Sections 96, 104 and 168 of the Constitution, in my opinion, it is not. Said section seems merely to be an express incorporation in the statutes of what we have above dealt with at length as a long established rule of construction.

Yours very truly,

J. FRED JOHNSON, JR.
Assistant Attorney General.

September 10, 1924.

Hon. H. B. Abernethy,
Judge Jefferson County Court of Misdemeanors,
Birmingham, Ala.

Dear Sir:

Your letter of September 3rd, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know if you have authority to remit the solicitor's fee provided for by Section 18 of the Act establishing the Jefferson County Court of Misdemeanors—Local Acts 1919, page 127—where conviction is had and no appeal is taken.

You fail to cite us to any provision of law in which such authority is even intimated and we know of none such. We are, therefore, of opinion that you have no such authority. In my opinion, you could no more deprive the treasury of Jefferson County of such fee than you could deprive the solicitor thereof if the fee was payable to the solicitor.

It may be that we have overlooked some provision of the law which created this doubt in your mind, and, if so, please cite us to such provision and we shall be glad to give you a further opinion upon the subject.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

September 10, 1924.

Mr. E. F. Allison,
President, Board of Revenue,
Livingston, Alabama.

Dear Sir:

Your letter of September 6th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Enclosed herewith is a copy of an order of the Board of Revenue of Sumter County fixing a license or privilege tax for operating motor vehicles over the roads of Sumter County.
>
> "Kindly advise us if we have the right to collect this tax from people living in an adjoining county who habitually haul to and from a railroad point in this county. For instance, a man living in Choctaw County, in the northern part, does his trading and hauls his crop, we will say, to York, in this county. There is no tax like this in Choctaw County. Is this man liable for this tax in Sumter County? If this man has paid a similar tax in Choctaw County, would he be liable in Sumter?"

Section 1366 of the Code of 1923, which gave authority in part to Courts of County Commissioners and Boards of Revenue to pass such an ordinance as the copy sent us show that your county passed is brought into the Code of 1923 from Section 13 of Act No. 80, approved February 13, 1923. (Acts 1923, page 62.) After the Code was adopted, Act No. 290 (Acts 1923, page 284, et seq.) was passed which, in my opinion, superseded said section 1366 of the Code of 1923. Section 22 of said Act No. 290 (Acts 1923, page 291) in my opinion, exempts all motor vehicles from levy of license tax by a court of County Commissioners or Board of Revenue, except "that any county may levy and collect for the purpose of maintaining the public roads, bridges and ferries of the county a license tax not to exceed one-half of the State license tax on *motor vehicles used for hauling timber, lumber or minerals* over the roads of said county."

The authority and power of your Board of Revenue, in my opinion, is given and limited by said Section 22 of said Act No. 290. The Code was adopted by Act approved August 17th, 1923, and this Act was approved September 13th, 1923.

In my opinion, your levy of said license tax is invalid, except to the extent that it levies "a license tax of one-half of the amount of the State license tax on motor vehicles used for hauling timber, lumber, or minerals over the roads" of your county. You will observe that said Section 22 (Acts 1923, page 291) provides that "The registration fee or license tax herein required to be paid on motor vehicles *shall be in lieu* of all other privilege taxes which the State, or *any county or municipality* thereof might impose, where the motor vehicle is used by the owner." The license or registration fee referred to as being in lieu of all others except in certain cases specified, is the regular license tax levied by the legislature on motor vehicles. It will be observed that, under said Section 22, counties are permitted to levy a license tax on *"motor vehicles used for hauling timber, lumber or minerals over the roads* of the county, while incorporated cities and towns are permitted to levy a license tax "on *motor vehicles used for carrying passengers* or *freight* for *hire."* Thus the limit of authority given both to counties and to incorporated towns and cities is provided. All other motor vehicles are exempted from all license tax except that levied by the Legislature. The license tax permitted to be levied by counties upon "motor vehicles, used for hauling timber, lumber or minerals over the roads of the county, need be paid in but one county in the State to authorize such motor vehicle to be used anywhere in the State; but any county may require such license tax of any person, no matter where such person resides, before using such motor vehicle over its roads, unless such a license has been taken out in some other county in the State.

If a person residing in Choctaw County uses a motor vehicle for hauling timber, lumber or minerals over the roads of your county and has not taken out such a license in his own county or some other county in the State than Sumter County, then you can require him to take out such license in Sumter County.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

September 10, 1924.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of September 1st directed to the Attorney General, has been handed me for reply.

You desire to know, first, if the county has a right to pay a special deputy sheriff to enforce the speed regulations on the public roads of the county, when the county is at this time paying one general deputy sheriff; and, secondly, if the county may purchase a motorcycle for such purposes. Your last inquiry is as to whether there is any way to accomplish the purpose indicated in the first two questions you propound.

I find no authority in the general statutes for the employment of deputies at the expense of the county other than Section 10188 of the Code of 1923, which provides for one chief deputy to be appointed by the sheriff and whose salary is fixed by the county commissioners, Board of Revenue or other governing body of the county, and to be not less than $900.00 and not more than $1,500.00 per year. The aforesaid section authorizes the sheriff to appoint such other deputies as he may need to properly perform the duties of his office, but the compensation of such other deputies is a matter of contract between the sheriff and such deputies, and the county is in no way liable for, nor is it justified in paying their salaries.

"It is believed to be the universal rule that when the law finds no compensation for deputies, they must be paid by the officer who employs them." Mayfield v. Moore, 139 Ala. 420.

Section 10189 of said Code of 1923, Sub-Section 4 enumerates the general duties of the sheriff as to ferreting out crime, apprehending and arresting criminals, securing evidence of offenses, etc.

It is a principle of the law too well established to require citation of authority, that the acceptance of an office is *cum enere,* and that no compensation may be received other than that provided in the statute.

Nor do I find any authority for the purchase at the county's expense of a motorcycle for a speed police.

Sec. 10205 provides for the sheriff's books and stationery. But this office has gone so far as to rule that long distance telephone calls on official business are not a legitimate charge against the county.

Therefore, in conclusion, it is my opinion that the Code does not authorize the employment by the county of a speed police, nor the purchase by the county of a motorcycle for apprehending violators of the speed laws on public roads.

In reply to the last question you propound, I would advise, as stated above, that the enforcement of the speed laws is part of the general duties of the sheriff, and in the performance of this, as other duties of the office, he may purchase such equipment and employ such deputies as he may think proper, but he may not do so at the expense of the county. No officer may make a charge against the county which the statute does not expressly or by necessary implication authorize, and this is true, however meritorious the purpose or however beneficial to the county.

I trust this will answer your inquiries.

Yours truly,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

September 13, 1924.

Hon. Jno. W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You furnish the Attorney General's office with letter from Mr. Chas. E. Lucas to Mr. R. E. Ledbetter, Rural School Supervisor, and request an opinion upon the inquiry therein made. Said letter is in words as follows:

"We have raised the amount of $6,000.00 for the completion of the school building, with the understanding to the people, that the town of Thorsby is to give them the town note to cover the amount subscribed, the note to mature in 1930.

"However, the question has arisen, by the Town Council, as to whether the Town of Thorsby can go into debt, using the

money for school building purposes, where the school is to get state aid, and the title to the property is vested in the State.

"Would you kindly look into the matter for us, through such channels, as you have available, and have us an opinion rendered, which I can present to the council, at their next Thursday night session.

"If it be the case, that the town cannot expend its money or money borrowed by it, on this school building, it will cause the work to have to be stopped for a longer period, when we were in hopes of soon resuming and finishing the building.

"It is of the greatest importance for us to know, and shall appreciate, if you can get this information for us as soon as possible."

It is said by our Supreme Court in the case of Colvin vs. Ward et al., 189 Ala., page 199:

> "It is established that a municipal corporation may exercise these, and only these powers: those granted in express terms; those necessarily implied in, or incident to, the powers expressly conferred; and those indispensably necessary to the accomplishment of the declared objects and purposes of the municipality."

After careful investigation of the statutes of this State I find nothing which, in my judgment, would authorize the Town of Thorsby to borrow money to spend in aiding in the construction of school building owned and operated by the State government or any of its governmental departments other than such municipal corporation.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

September 23, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of July 16th enclosing letter to you from J. L. McLane, tax assessor of Talladega County, has been referred by the Attorney General to me for reply.

As I understand the facts of his case, they are as follows:

Mr. McLane, as tax assessor, prepared, as provided by Sections 67 and 68 of the General Revenue Act, 1919, the plat book of all blocks and lots which had been platted and the maps of which were recorded in the office of the judge of probate and also the plat book of all lands in the county other than those which have been divided into blocks and lots, the maps of which are recorded in the office of the judge of probate.

For this service, he settled with the Court of County Commissioners for five hundred dollars. He now wishes to know if he is to be allowed, under the Revenue Act of 1923 for the annual revision of such plat books required by Section 69 of the Revenue Act, 1919.

No compensation for this work of making the annual revision in such plat books was allowed by the Act of 1919. The only compensation allowed by the 1919 Revenue Act with reference to said plat books was for completing the books in the first instance. All subsequent annual revisions required to be made were to be made without any specific compensation. In other words, such annual revisions were to be but a part of the general duties of a tax assessor.

The following changes in the Revenue Act of 1919, with reference to said plat books, were made in the Revenue act of 1923:

1st. Section 67 of the Revenue Act of 1919 appears as Section 46 of the Revenue Act of 1923 with the following changes:

(a) Section 67 of the Revenue Act, 1919, did not require the assessor to note on each block and lot platted in the plat book the *assessed value* thereof; while Section 46 of the Revenue Act of 1923 does require this notation to be made.

(b) Section 67 of the Revenue Act of 1919 contained the following clause: "Provided that if such plat books have already been made, the assessor shall annually make the entries thereon without compensation;" while Section 46 of the Revenue Act of 1923 contains the following clause instead of the one just quoted: "The tax assessor shall annually make the entries thereon, for which he may be allowed a reasonable compensation by the Court of County Commissioners or Board of Revenue." Section 67 of the Revenue Act of 1919 and Section 46 of the Revenue Act of 1923, both deal entirely with the plat book of blocks and lots, maps of which have been recorded in the office of the probate judge.

2nd. Section 68 of the Revenue Act of 1919, appears as Section 47 of the Revenue Act of 1923. There is no difference in the language used in these two sections except in the last sentence thereof. The last sentence of said Section 67 reads as follows: "The Court of County Commissioners or court of like jurisdiction, shall pay out of the general funds of the county, for making out the plat books required by this and the preceding section, a reasonable amount of money as compensation to the person making out such book or books."

The last sentence of said Section 47 reads as follows: "The Court of County Commissioners or court of like jurisdiction shall pay out of the general fund of the county, for making out the plat books required by this and the preceding section, a reasonable compensation to the person performing said work, which debt shall be a preferred claim against the county."

It will be noted that the only material change made by said Section 47 is contained in the words: "Which debt shall be a preferred claim against the county." This addition in said Section 47 does not affect in any way the question propounded.

It is perfectly clear that so far as the making of the annual revisions in the plat book of lands not mapped into blocks and lots, no provision is made for compensation either in the revenue act of 1919, nor in the revenue act of 1923. The only provision made for pay with reference to the plat book of lands other than those platted into blocks and lots, is for making the said plat book in the first instance. We, therefore, are of the opinion that since no compensation has been provided for making

annual changes in the plat book of lands not platted into blocks and lots, in neither the Revenue Act of 1919 nor in that of 1923, such duty must be considered as an inherent part of the work of a tax assessor, just as is the listing of property for assessment, for which no other compensation was intended by the Legislature than commissions on the taxes assessed by him and collected by the tax collector. In other words, it constitutes part of the work for which the tax assessor is paid by commissions on taxes assessed by him and collected by the tax collector. It is a highly requisite part of the work of assessment.

We come next to consider the effect of the change, from Section 67 of the Revenue Act of 1919, made in Section 46 of the Revenue Act of 1923. It will be remembered that said Section 67 forbade any compensation for making the annual revisions in the block and lot plat book, while said Section 46 provides that a reasonable compensation may be allowed the assessor for making such annual revisions.

The present incumbents of the offices of tax assessor in the several counties of the State began their present terms of office while the said Revenue Act of 1919 was in full force and effect, which act prohibited the payment to them of any compensation specifically for making these annual revisions. What effect, if any, then, has Section 68 of the Constitution of Alabama upon the validity of this provision for compensation to tax assessors for making the annual revision in the lot and block plat book, so far as the present term of office is concerned? This section of the Constitution, so far as it affects this question, is as follows:

"The Legislature shall have no power to grant or to authorize or to require any county * * * to grant, nor shall any county * * * have power * * * to increase or decrease the fees and compensation of such officers during their terms of office * * *; provided, this section shall not apply to allowances made by Commissioners Courts or Boards of Revenue to county officers for *ex officio* services."

It will be seen at once that the whole question turns upon whether or not the yearly changes and corrections in the lot and block plat book are or are not, *ex officio* services within the meaning of said Section 68 of the Constitution. If they are *ex officio* services, then, of course, the provision in said Section 46 for

pay for such services will apply to the present incumbents of such offices, during the term for which they were elected, as well as to incumbents during subsequent terms.

Whether or not such services are *ex officio* services within the meaning of said Section 68 of the Constitution, depends upon the proper answer to the question whether or not such services are within "the general and natural purview" of the office of tax assessor, or whether they are services not within "the general and natural purview" of the office of tax assessor, but are merely services, not essential to the proper assessment of lots and blocks, which have been platted and the maps thereof recorded in the office of the probate judge, superimposed by statute upon the incumbent of such office. In other words, are such services inherent in the office of tax assessor or are they services not essential to the proper administration of the office of tax assessor? If such services are within the "general and natural purview" of the office of tax assessor, if they are inherent in the office, then in my opinion they are not *ex officio* services, within the meaning of said Section 68 of the Constitution of Alabama. If they are services not essential to the proper administration of the office of tax assessor, but are such as are merely superimposed upon the incumbent of such office, then they are *ex officio* services and compensation for such services are not limited in any way by the provisions of said Section 68 of the Constitution of Alabama, but on the other hand, if such services are essential to the proper administration of the office of tax assessor, if they are within the "general and natural purview" of such office, then such services, in our opinion, are not *ex officio* services and are controlled by said Section 68 of the Constitution.

This question as to the meaning of the words *"ex officio* services" used in said Section 68 of the Constitution, were considered by our Supreme Court in the case of *Macon County v. Abercrombie, Judge,* 184 Ala. 283, *et seq.* The question really being considered in that case, and decided in that case, was whether or not the duties imposed by statute upon the probate judge with reference to public roads were, or were not, *ex officio* services within the meaning of said Section 68 of the Constitution. It was decided that they were *ex officio* services within the meaning of said section of the Constitution.

In the opinion handed down in that case, there are implications that any service required of the incumbent of a particular office for which no definite fee or compensation is provided constitutes an *ex officio* service; but such was not necessary to the decision of that case and must be considered as mere dictum, and reasoning, which in my judgment, was not accurate either in the premises stated or the conclusion drawn. Doubtless, the members of the court, other than the writer of the opinion, had in mind the question to be decided only, viz.: whether or not the services required by statute of a probate judge with reference to public roads were *ex officio* services within the meaning of said Section 68 of the Constitution of Alabama. Certainly, the kind or character of pay or compensation which an official may receive for services, or whether or not he receives a specific compensation for the particular service, can in no way determine the question whether or not such service is an *ex officio* service. Furthermore, this section of the Constitution has no application to additional services imposed by statute upon the incumbent of an office during his term of office. It is confined to services required of him at the time of the beginning of his term of office—the services which he impliedly agreed to perform for the compensation then allowed to such officer.

We have, in the case under consideration, the fact that the duty of rendering the services of making the annual changes and corrections in said plat book by the tax assessor was imposed by Section 67 of the Revenue Act of 1919. This service, in our opinion, is absolutely necessary to a proper administration of the office of tax assessor. It is, in my opinion, probably the best method that could be used to enable the tax assessor to determine when all the lots and blocks subject to assessment had been listed for assessment and also whether a proper description had been given. We are, therefore, of the opinion that such services are not *ex officio* services within the meaning of said Section 68 of the Constitution, and that the only service for which the tax assessor could be allowed compensation under the provisions of said Section 46, during his present term of office, with reference to work done or to be done on said lot and block plat book is for the service of placing the assessed value of each of such lots and blocks on such plat book as required by said section. This is an

additional service not required at the time the present incumbents of the office of tax assessor entered upon the duties of such office, and said Section 68 of the Constitution does not apply to such additional services. It is also part of the service to be performed by the tax assessor in making the annual entries upon such plat as required by said Section 46 of the Revenue Act of 1923.

The present term of office will end with the term for which tax collectors were elected, and the additional term added by the last Legislature will not, in my opinion, be affected by said Section 68 of the Constitution, so far as any provision in the Revenue Act of 1923 is concerned.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

September 25, 1924.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Ala.

Dear Sir:

You request to be advised whether or not the probate judge is entitled to the fee provided by Section 7285 of the Code of 1923 for preparing a list of registered voters and is also allowed clerical help provided by Section 402 of the Code of 1923 for the purpose of preparing a list of qualified electors required to be furnished the election inspectors.

Section 7285, in providing fees due probate judges, contains the following, to-wit:

"For preparing list of registered voters, as required by Section 187 of the Constitution, two and one-half cents a copy for each voter enrolled, to be paid by the county commissioners in each county."

The list of registered voters which Section 187 of the Constitution required the probate judge to prepare was a list of persons registered under the temporary plan of registration contained in the provisions of Section 186 of the Constitution of 1901, which said list of registered voters was required to be filed

with the Secretary of State. The temporary plan of registration contained in Section 186 of the Constitution was not operative after January 1, 1903, and therefore no list of registered voters is required by Section 187 of the Constitution to be made by the present probate judges. To give this clause of said Section 7285 a field of operation, the word "as" used therein must be interpreted to mean "similar to, of the same kind." 5 C. J., 597. This would make the provision read as follows:

"For preparing list of registered voters *similar to that* required by Section 187 of the Constitution, two and one-half cents a copy for each voter enrolled, to be paid by the county commissioners of each county."

Section 401 of Volume 1 of the Code of 1923 makes it the duty of the probate judge to certify an alphabetical list of the names of registered voters to the Secretary of State after the Board of Registrars have returned the list of names registered by it to the office of the judge of probate. It is my opinion, that for preparing and certifying to this alphabetical list to the Secretary of State by the probate judge, which is the list of registered voters similar to that required by Section 187 of the Constitution, that the probate judge is entitled to two and one-half cents a copy for each voter enrolled, to be paid by the county commissioners in each county.

Section 402 of the first volume of the Code of 1923 provides for clerical assistants for the preparation of the list of qualified electors which is required to be furnished by the probate judge to the election inspectors for their guidance in holding an election. This list of qualified electors which is to be furnished election inspectors is entirely different from the alphabetical list of names of persons registered by the Board of Registrars which the probate judge is required to certify to the Secretary of State. In my opinion, the clerical assistance provided for by Section 402 is available for the purpose of preparing the list of qualified electors which the judge of probate is required to furnish election inspectors.

Yours Very truly,

HARWELL G. DAVIS,

Attorney General.

September 29, 1924.

Mr. Jas. F. Hawkins,
Tax Collector,
Birmingham, Ala.

Dear Sir:

In answer to your letter of August 9th in regard to interest on delinquent taxes, will say that under the provisions of our statutes we have two kinds of delinquency. One is delinquency as to assessment. With this delinquency the tax assessor deals; the statute requiring him to assess a penalty in addition to the regular assessment. Section 58 of the Revenue Act of 1919 did, and Section 39 of the Revenue Act of 1923 does require the assessor to add a penalty of ten per cent for each year of escape. In other words, where property has escaped, say for four years, a penalty of forty per cent should be added by the assessor. The collector should in such case, when the assessment is turned over to him, collect both the taxes and penalty.

The other delinquency is with regard to payment of taxes that have been assessed.

Where property has been assessed and the taxpayer has become delinquent in payment thereof, then it is the duty of the tax collector to collect interest at the rate of 8 per cent per annum on such taxes from the date of delinquency to date of collection, in addition to the taxes. Where taxes have been assessed during the regular assessment year, the date of delinquency is January 1st, next succeeding. In case the date of assessment is on or after January 1st succeeding the regular assessment year for such assessment, such taxes become due and payable at once after assessment, and bear interest from date of assessment.

No interest should be collected on a penalty.

Respectfully,

A. A. EVANS,
Assistant Attorney General.

September 29, 1924.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Sir:

Your letter of September 11th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"I am enclosing a copy of application which is to be used by the State Tax Commission for 1925 motor vehicle license and certificate of title. You will note that the application requires the acknowledgment by the probate judge.

"Kindly give me your opinion as to whether or not I should charge a notary fee of $.25 for this acknowledgment."

In reply will say that in my opinion there was no legislative intent to require an applicant for motor vehicle license to file such application under oath. Neither does it require that this application for certificate of title be sworn to. In the latter case, the law simply provides a severe penalty for making false statements in such applications. The requirement of affidavit was, in my opinion, intentionally omitted; as it was not desired that an additional expense should be added beyond what was required to be paid for license or certificate of title.

In my opinion, you should not require that these affidavits be made.

Yours very truly,

A. A. EVANS,
Assistant Attorney General.

TRIAL SOLICITORS' REPORTS TO THE ATTORNEY GENERAL MADE IN COMPLIANCE WITH SECTION 5502 OF THE CODE OF ALABAMA OF 1923

GENERAL SUMMARY OF CASES OF CIRCUITS, 1922-24

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abandonment	5	1		2				1					1	2
Abduction	2		2											
Abortion, criminal	6	1		5										2
Abusive language	377	234	20	110	18			9		219	37	6	22	28
Abusive language before women	1	1					1							
Adultery	70	28	8	26	5					23	5	1	24	3
Affray	10	7	2		1				2	5	2		7	2
Animals, cruel killing	2	2								1			1	
Animals, cruelty to	2	2						1		1	1		1	
Animals, failure to bury	1	1											1	
Animals, injury to	47	21	5	19	1			1		12	9	3	7	9
Arson, attempt	4	2		2			2			5			1	
Arson, first degree	24	6	7	10			5				1	1	3	5
Arson, second degree	11	2	3	4			2	1			2	2		4
Arson, third degree	2		1	1										1
Assault	64	34	4	26				2		30	7		22	11
Assault and battery	699	476	57	137	23		1	69	12	370	192	22	247	63

Assault to murder	454	192	84	149	21		131	32		16	97	28	53	48
Assault to rape	31	17	6	6			15	1		1	8	5	7	
Assault to rob	12	7		4			6			2	2		4	1
Assault with weapon	362	280	20	41	14		1	54	3	217	145	6	91	12
Auto law, violating	168	101	27	38	8			5	3	69	19	5	44	13
Automobile, operating without license	6	4		1	1					4	2		2	
Bank bond law, violating	4			4										
Banking law, violating	2		1	1										1
Bastardy	91	40	9	38	10			9		20	11	5	16	7
Bigamy	25	15	1	6	4		14	2			8	3	8	3
Blue sky law, violating	1				1									
Bribery, attempt	9		2	6	1									3
Burglary	700	368	65	173	38		254	96	7	6	158	24	98	36
Burglary, possessing burglar's instrument	1		1											
Burglary, possessing burglar's tools	1	1						1					1	
Burning insured dwelling	9			9										
Carnal knowledge	52	17	10	22	7	1	13			2	7	4	10	6
Carrying concealed weapon	483	292	40	133	23			61	1	207	152	17	98	50
Changing mark or brand	2		1	1								1		1
Changing name to conceal identity	2	1		1						1				
Checks, giving fraudulent	1	1								1			1	
Checks, issuing worthless	79	38	3	27	3			12		14	4		27	7
Child labor law, violating	1	1								1			1	
Cigarettes, selling to minors	1	1								1			1	
Cock fighting	1	1								1			1	
Conspiracy	2			2										

GENERAL SUMMARY OF CASES, 1922-1924—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.			Convictions.	Acquittals.	Convictions.	Acquittals.
Contempt of court	9	9							6	3	2		1	
Contract labor, violating	1	1								1			1	
Contract, violating written	3	2	1							1	1	1	1	
Counterfeiting	2		1		1									1
Crime against nature	6	4		1			2	2			2	1	2	
Decoying child or kidnaping	4	1	2	1				1			1			
Defacing public building	4	2		2				2			2			
Defacing jail	1	1						1			1			
Defamation	16	3	1	9	2					3			2	1
Delinquency, contributing to	2			2								1		1
Dentistry, practicing without license	1			1										
Desertion	3	2	1					1		2			2	1
Destroying fence	1	1								1	1			
Disorderly conduct	2				1									
Disturbing public assembly	1			1										
Disturbing religious worship	143	84	16	43			2	6		70	10	3	63	29
Disturbing school	10	10								10	10			

Drugs, retailing	1			1										
Dynamite, wilful injury with	14	5		6	1		3	1		1				
Electricity, unlawful use of	1	1								1			1	
Embezzlement	133	32	19	73	5		14	7	5	6	13	6	11	20
Enticing girl	1			1								1		
Escape	65	35		23	2		27	5		2	11	2	17	1
Escape, aiding to	3	1	1	1			1						1	1
Escape, aiding prisoner to	2	2					1							
Escape, attempting to aid	1	1						1			1			
Extortion	1			1										1
False entry by banking officers	1	1					1						1	
False impersonation	1		1											
False pretense	191	50	17	108	19		13	14	5	14	21	11	24	29
Felon, concealing	1			1										
Felon, harboring	1		1											
Felony, attempt to commit	16	12	2	2				2	1	2	1	1	3	1
Forfeiture of bail	17	17			1					16	7		8	
Forgery, attempt	11	7	1	2			1	1	4	2	1		5	
Forgery, first degree	189	132	14	94	15		87	31	3	9	25	7	41	19
Forgery, second degree	50	33	2	7	8		31	2			19		13	2
Forgery, third degree	5	4			1		3	1			3		1	
Fornication	1			1										
Game law, violating	32	11	3	18						7	4	4	6	9
Gaming	98	43	6	42	2			2		34	4	6	26	14
Gaming in public place	4	4								4			4	
Gaming, keeping gaming table	10	3	6	1			2			1		6	3	1

GENERAL SUMMARY OF CASES, 1922-1924—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Gaming on Sunday	16	11		1	4				1	10			2	
Gaming, permitting	2				2									
Health law, violating	2	2												
Hunting without license	11	1	2	1	7					1	2	6		1
Hunting without permit	7	1		5				1		1	1		1	1
Incest	10	5	1	4			5				2		3	
Indecent exposure of person	5	5		3				3						
Insurance law, violating	4	1		3									1	
Labor agent	1		1									1		
Labor agent without license	2		2											1
Labor, interfering with	1			1										1
Labor, from person	21	16	4	10	1		3	3						
Labor, grand	831	455	112	247	23		305	136	2	8	224	46	123	52
Labor, petit	511	353	38	112	19		1	75	86	199	152	22	122	44
Letters, sending abusive letters	1	1						1			1			
Letters, sending threatening letters	4		1	3										
License, doing business without	34	15	1	19	3					6	1		7	1

License law, violating	1			1										
Lottery, operating	1			1										
Malicious mischief	31	12	5	13				3		8	1	2	6	4
Maintaining a nuisance	1	1								1				
Manslaughter, first degree	169	142	14	9	3		104	12	3	20	79	3	51	11
Manslaughter, second degree	30	25	2	3				16	2	13	15	1	5	2
Mayhem	4	1		3				2		1	3	1		
Meat, selling tainted	1	1								1	1			
Medicine, practicing without certificate	28	9	9	9	1		1			8		1	9	10
Medicine, practing without license	34	15	2	13	5				2	14	2		16	
Miscegenation	16	8	1	5	3		8	1			6	1	3	1
Murder, first degree	333	160	100	78		14	137				84	37	41	34
Murder, second degree	152	111	17	17			117			2	71	3	38	15
Non-support	7	4		3				1		1	1	3		1
Non-support and desertion	11	1	2	8				1						
Officer, attempting to corrupt or influence	4	1	2	1									1	2
Oyster and fish law	1			1										
Peace, breach of	3			2	1									
Peace proceedings	5			5										
Perjury	42	6	8	20	8		7			2	2	1	2	11
Poison, putting out	1			1										
Presenting gun	50	18	11	16	5			2	5	10	2	2	14	12
Profane language in hearing of women	2	2						1		1			2	
Prohibition law, attempting to distill	37	37						1		36	7		21	
Prohibition law, attempting to mfg. liquor	2	2								2			2	
Prohibition law, distilling	1762	930	236	414	85		680	45	6	218	312	57	518	212

GENERAL SUMMARY OF CASES, 1922-1924—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Prohibition law, possessing still	262	144	31	58	8	.....	126	15	.....	14	87	10	64	30
Prohibition law, violating	2626	1404	300	671	143	.....	20	347	61	879	350	84	729	246
Property, fraudulent conveyance of	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....
Property, injury to	19	5	4	3	1	.....	.....	.....	.....	4	.....	.....	4	2
Property, malicious injury to	6	4	1	1	.....	.....	.....	1	1	2	.....	1	4	.....
Property, receiving mortgaged property	4	.....	2	2	.....	.....	.....	.....	.....	.....	.....	4	.....	.....
Property, removing property on which there is a lien	3	1	.....	.....	2	.....	.....	.....	.....	1	.....	.....	1	.....
Property, selling mortgaged property	92	24	8	58	3	.....	4	1	.....	21	4	3	19	20
Property, selling property under lien	16	2	2	13	1	.....	1	.....	.....	1	1	1	1	4
Property, temporary use of	7	5	.....	.....	2	.....	.....	1	.....	4	4	.....	1	.....
Property, unlawful use of	1	1	.....	.....	.....	.....	.....	.....	.....	1	1	.....	.....	.....
Property, using without permission	11	4	.....	7	.....	.....	.....	.....	.....	3	1	.....	1	2
Poolroom law	1	1	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	1	.....
Public drunkenness	408	243	34	135	11	.....	10	4	4	199	20	1	184	80
Quarantine law, violating	23	6	2	14	1	.....	.....	.....	.....	5	.....	.....	6	.....
Quarantine law, violating (live stock)	84	13	4	6	61	.....	.....	.....	12	1	4	1	9	3

Railroad, wanton or malicious obstructing of	2	2					2						2	
Rape	37	7	13	13	4	1	4	1			3	1	4	1
Resisting officer	34	11	3	19	1			1		9	5		4	5
Revenue law, violating	15	1	1	12	1			1						2
Road, failure to work public road	2				2									
Road law, violating	144	44	18	2	33		1	2		46	17	8	24	22
Road, obstructing	1		1											1
Road, obstructing public road	1		1											
Robbery	97	25	38	16	7		24				14	7	7	4
Robbery, attempt	1	1					1				1			
Robbery, highway	1	1					1						1	
Sanitary law, violating	2			2										
School law, violting	7	1	1	5						1				2
School, nuisance to	1	1								1			1	
Seduction	67	9	9	46	3		9						10	18
Seining	4	1	3							1	1			3
Shooting across public road	13	12		1				1		10	3		7	1
Shooting into dwelling	8	5	2		1			2		3	2		1	
Shooting on train	2	2						1		1	2			
Simony	1			1										
Slander	1	1							1	1			1	
Slot machine, operating	30	29			1					29	1	1	28	
Sodomy	11	2	2				1			1		1	1	
Stock law, violating	39	6	6	6	1					5	1	2	3	26
Stolen property, bringing into State	3		1	2										1
Stolen property, buying, etc.	70	39	9	14	5		13	7	3	18	24		9	3

GENERAL SUMMARY OF CASES, 1922-1924—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Stolen property, removing	1		1									1		
Store open on Sunday	1	1							1				1	
Sunday law, violating	40	27	3	11	1					24	4	5	8	6
Threats	1		1											1
Tick law, violating	150	27	8	105	1					14			14	31
Timber, unlawful cutting of	1		1											1
Trains, unlawful riding	1		1											1
Traffic law, violating	1	1								1			1	
Trespass	53	13	11	25	4			1	2	8	9	3	4	8
Unlawful cohabitation	1			1										
Vagrancy	210	53	43	103	10			7	10	28	14	8	18	33
Vehicle tax, failure to pay	40	1	1	38						1			1	1
Totals	13139	7242	1612	3859	731	16	2218	1133	254	3297	2551	512	3409	1421

Percentage of convictions, 55.118. Percentage of acquittals, 12.268. Percentage of nolle prosequies, 29.371. Percentage of cases abated or withdrawn, 5.563.

GENERAL SUMMARY OF CASES OF CIRCUITS

SECOND CIRCUIT														
Butler County	115	59	10	37	9		18	8		31	28	5	34	6
Crenshaw County	115	48	11	43	15		8	3		33	12	12	36	27
Lowndes County	86	62	4	16	5		27	7		26	47	4	2	1
Total	316	169	25	96	29		53	18		90	89	21	72	34
FIRST CIRCUIT														
Choctaw County	145	48	18	51	9		7	2	1	40	35	16	14	18
Clarke County	170	83	26	48	4		9	7	3	66	58	20	25	51
Washington County	111	68	14	32	9		6		16	60	14	6	56	40
Total	426	199	58	139	22		22	9	20	166	107	42	95	109
FOURTH CIRCUIT														
Bibb County	241	135	6	65	15		31	49	14	42	64	2	65	5
Dallas County	394	250	28	70	44		57	96		107	137	11	51	6
Hale County	110	69	2	16	23		18	18	4	45	58		9	3
Perry County	165	89	18	51	10		24	9		61	72	5	19	7
Wilcox County	165	99	11	32	12		30	40	3	52	94	15	9	3
Total	1075	642	65	234	104		160	212	21	307	425	33	153	24

GENERAL SUMMARY OF CASES OF CIRCUITS—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
THIRD CIRCUIT														
Barbour County	143	99	27	19	.....	.....	41	4	.....	53	57	10	41	17
Bullock County	69	53	11	7	.....	.....	35	4	.....	13	45	10	7	2
Dale County	62	23	9	11	.....	.....	11	2	.....	11	3	2	17	11
Russell County	145	88	28	25	.....	2	29	26	.....	36	55	9	37	18
Total	419	263	75	62	.....	2	116	36	.....	113	160	31	102	48
SEVENTH CIRCUIT														
Calhoun County	169	123	27	20	.....	.....	55	25	.....	41	31	8	54	25
Cleburne County	101	80	11	10	.....	.....	41	.....	.....	39	4	.....	57	7
Talladega County	120	81	11	16	.....	1	30	7	.....	25	37	1	46	9
Total	390	284	49	46	.....	1	126	32	.....	105	72	9	157	41

SIXTH CIRCUIT														
Tuscaloosa County	364	222	40	98	7	.....	48	61	9	35	78	2	142	9
FIFTH CIRCUIT														
Chambers County	126	63	30	31	6	.....	32	7	.....	24	41	9	25	15
Lee County	162	108	25	24	5	.....	41	27	.....	24	72	9	32	11
Macon County	66	42	8	10	2	2	35	2	.....	7	43	5	2	3
Randolph County	136	68	18	45	4	.....	39	2	1	22	31	5	35	13
Tallapoosa County	90	51	12	24	4	.....	27	6	.....	14	21	3	28	9
Total	580	332	93	134	21	2	174	44	1	91	208	31	122	51
NINTH CIRCUIT														
Cherokee County	156	70	29	53	5	.....	33	3	2	34	11	4	66	56
DeKalb County	69	69	.....	.....	.....	.....	.....	9	.....	55	.....	.....	64	.....
Jackson	279	125	21	133	6	.....	57	17	1	59	19	21	108	132
Marshall County	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	504	264	50	186	11	.....	90	29	3	148	30	25	238	188

GENERAL SUMMARY OF CASES OF CIRCUITS—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
EIGHTH CIRCUIT														
Cullman County	69	42	5	23	.....	.....	20	.....	4	23	.....	.....	35	8
Lawrence County	28	21	7	.....	.....	.....	18	2	.....	1	8	7	12	1
Limestone County	118	88	12	14	2	.....	72	4	.....	22	55	11	48	19
Madison County	765	456	59	212	14	2	78	30	11	229	57	4	156	30
Morgan County	85	62	17	9	.....	.....	49	2	7	20	30	3	36	23
Total	1065	669	100	258	16	2	237	38	22	295	150	25	287	81
TWELFTH CIRCUIT														
Coffee County	188	131	18	43	6	.....	16	29	.....	109	32	1	88	18
Covington County	226	131	28	58	7	.....	42	26	1	61	16	14	104	36
Pike	119	81	12	24	6	.....	30	17	.....	33	42	6	37	7
Total	533	343	58	125	19	.....	88	72	1	203	90	21	229	61

ELEVENTH CIRCUIT														
Colbert County	109	62	25	25			22	4		31	36	7	29	4
Franklin County	105	35	10	45	6	1	29	1		15		1	45	12
Lauderdale County	392	202	60	118	7		72	7		108	33	3	166	41
Total	543	299	95	188	13	1	123	12		154	69	11	240	57
TENTH CIRCUIT														
Jefferson County	2054	664	323	822	94	5	185	249	40	160				
Total	2054	664	323	822	94	5	185	249	40	160				
FIFTEENTH CIRCUIT														
Montgomery County	691	467	66	126	4	4	163	84		175	244	110	205	65
Total	691	467	66	126	4	4	163	84		175	244	110	205	65

GENERAL SUMMARY OF CASES OF CIRCUITS—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
FOURTEENTH CIRCUIT														
Fayette County	235	113	23	71	16	.....	36	9	1	84	8	.....	110	20
Lamar County	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marion County	125	57	21	50	2	.....	15	2	6	35	.....	.....	7	1
Walker County	372	161	55	158	.....	.....	44	1	4	129	34	22	129	163
Winston County	308	103	29	135	12	.....	20	2	2	78	24	5	.....	.....
Total	1040	434	128	414	30	.....	115	14	13	326	66	27	246	184
THIRTEENTH CIRCUIT														
Mobile County	1009	558	99	122	230	1	154	144	98	161	216	27	342	72
Total	1009	558	99	122	230	1	154	144	98	161	216	27	342	72

EIGHTEENTH CIRCUIT														
Clay County	149	75	10	48	17	.....	28	2	3	41	4	5	65	41
Coosa County	87	57	5	23	1	.....	15	3	.....	31	20	1	26	3
Shelby County	236	125	12	102	22	1	22	.....	7	84	31	9	85	71
Total	472	257	27	173	40	1	65	5	10	156	55	15	176	115
SEVENTEENTH CIRCUIT														
Greene County	142	117	10	13	1	.....	18	20	.....	71	99	13	15	2
Marengo County	116	73	14	27	1	.....	14	5	.....	61	62	16	12	7
Pickens County	88	66	3	14	5	.....	8	5	.....	48	29	2	41	2
Sumter County	99	74	12	12	.....	.....	15	6	.....	52	65	16	10	1
Total	445	330	39	66	7	.....	55	36	.....	232	225	47	78	12
SIXTEENTH CIRCUIT														
Blount County	113	60	19	43	1	.....	11	3	1	42	2	.....	16	15
Etowah County	297	137	25	132	9	.....	31	13	5	98	10	.....	20	7
St. Clair County	149	57	24	61	7	.....	15	9	4	39	15	10	47	25
Total	559	254	68	236	17	.....	57	25	10	179	27	10	83	47

GENERAL SUMMARY OF CASES OF CIRCUITS—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
TWENTY-FIRST CIRCUIT														
Baldwin County	97	54	12	27	3		26	1		24	16		35	10
Conecuh County	89	43	8	21	7		11	3		38	32	2	22	5
Escambia County	130	70	7	45	7		23	1		47	24	2	44	7
Monroe County	106	62	6	32	10		14	4	1	40	35	3	24	3
Total	422	229	33	125	27		74	9	1	149	107	7	125	25
TWENTIETH CIRCUIT														
Geneva County	147	65	22	56			29	5		26	20		42	75
Henry County	102	61	7	26	5		24	1		36	28	8	30	35
Houston County	124	57	18	48			6	3		26	12	8	37	46
Total	373	183	47	140	5		59	9		88	60	16	109	156

NINETEENTH CIRCUIT														
Autauga County	133	72	31	31	2	.....	17	5	.....	17	33	11	27	12
Chilton County	209	95	30	83	4	.....	19	12	1	23	26	1	57	14
Elmore County	166	94	13	32	17	.....	55	5	.....	16	46	4	51	8
Total	508	261	74	146	23	.....	91	22	1	56	105	16	135	34

CIRCUIT COURT OF AUTAUGA COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	3	1	1	1								1	1	
Adultery	2	1		1									1	
Animals, injury to	3	1	1	1								1		
Assault and battery	4	2	2								1		1	2
Assault to murder	7	3	3	2	1					2	1	2	1	1
Assault with weapon	6	6								6	1			
Bastardy	2	1	1								1	1		
Bigamy	1	1					1				1			
Burglary	4	2		2			1				2			
Carnal knowledge	3	2	1	1			2				1		1	1
Carrying concealed weapon	5	3		2						1			1	
False Pretense	2		1	1								1		
Fogrery, first degree	2	2					1				1		1	
Forgery, second degree	4	3			1		3				3			
Hunting without permit	1			1										
Larceny, grand	1	1									1			
Larceny, petit	8	3	3	2				2			1	1		
Manslaughter, first degree	3	3					3				2		1	

Murder, second degree	2	1	1				1				1			
Perjury	1			1										
Presenting gun	1	1								1				
Prohibition law, violating	26	17	7	2				3		3	8	1	9	3
Prohibition law, distilling	5	2	1	2						2	1		1	
Prohibition law, possessing still	29	12	8	9			4				4	3	8	3
Resisting officer	1			1										1
Road law, violating	1		1											1
Sedeuction	1	1					1						1	
Selling, mortgaged property	2	1		1						1	1			
Sunday law, violating	1	1								1	1			
Trespass	1			1										
Violating written contract	1	1									1			
Totals	133	72	31	31	2		17	5		17	33	11	27	12

Percentage of convictions, 54.13. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BALDWIN COUNTY.

Abusive language	1		1											1
Animals, injury to	2		1	1										
Assault and battery	6	3	1	2						3	1		2	1
Assault to murder	2	1	1				1							1

CIRCUIT COURT OF BALDWIN COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault with weapon	6	3	2	1						2	1		1	2
Bastardy	1	1						1					1	
Burglary	9	8		1			8				2		6	
Carnal knowledge	1			1										
Disorderly conduct	2				1									
Disturbing religious worship	1			1										
Forgery, first degree	2	1		1							1			
Forgery, second degree	1	1					1				1			
Fornication	1			1										
Game law, violating	1		1											1
Health law, violating	2			2										
Larceny, grand	7	5		2			5				5			
Larceny, petit	3	3								3	3			
License, doing business without	1			1										
Manslaughter, first degree	2	2					2						1	
Medicine, practicing without license	1	1											1	
Prohibition law, violating	19	14	1	4						14			14	
Prohibition law, distilling	12	6	3	2	1		6				2		4	3

Prohibition law, possessing still	4	3		1			3					3	
Property, injury to	1			1									
Road law, violating	4	1	1	2						1		1	1
Robbery	1			1									
Slot machine, operating	1	1								1		1	
Stock law, violating	3			2	1								
Totals	97	54	12	27	3		26	1		24	16	35	10

Percentage of convictions, 55.67. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BABOUR COUNTY.

Adultery	3	3								3		3	
Animals, injury to	1	1								1		1	
Arson, first degree	2	1		1			1					1	
Assault and battery	28	21	4	3				2		19	13	8	4
Assault to murder	7	4	3				4				4	3	
Assault to rape	1	1					1					1	
Burglary	7	5	1	1			5				4	1	1
Carrying concealed weapons	9	6	2	1				1		5	5	1	2
Checks worthless, giving	3	3								3		3	
Disturbing religious worship	1		1										1
Escape	1			1									

CIRCUIT COURT OF BARBOUR COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
False pretense	3	2		1						2			2	
Larceny, grand	6	6					6				3		3	
Larceny, petit	8	6	2	1						5	3	3	1	
Manslaughter, first degree	4	4					4				4			
Murder, first degree	3		2	1										2
Murder, second degree	3	3					3				3			
Presenting gun	1		1										1	
Profane language in hearing of women	1	1						1					1	
Prohibition law, violating	17	11	2	4						11	4	1	7	1
Prohibition, distilling	23	16	4	3			16				12	1	4	3
Prohibition law, possessing still	1	1					1				1			
Public drunkenness	1	1								1			1	
Resisting officer	1		1											1
Selling mortgaged property	1	1								1			1	
Selling property under lien	2			2										
Seining	4	1	3							1	1			3
Shooting across public road	1	1								1			1	

Trespass	1		1									1		
Totals	143	99	27	19			41	4		53	57	10	41	17

Percentage of convictions, 69.23. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BIBB COUNTY.

Abusive language	5	4		1						4	4			
Arson, attempt at	1	1					1				1			
Assault and battery	4	2		1				1		3	2		2	
Assault to murder	10	7		3			6				6			
Assault with weapon	2	2						2			2			
Auto law, violating	3	1	1	1						1			1	1
Bigamy	4	2			2		2						2	
Burglary	9	7		1	1		3	4			6		1	
Carrying concealed weapons	2	2		1						1				
Checks, issuing worthless	2	2		2										
Defamation	1			1										
Disturbing public worship	1	1								1			1	
Escape, attempt to aid	1	1						1			1			
Gaming	2	2								2			2	
Hunting without permit	2			1				1			1			
Larceny, grand	3	2	1					2						1

CIRCUIT COURT OF BIBB COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Larceny, petit	6	6						4	1	3	4		2	
Murder, first degree	2	2					2				2			
Murder, second degree	1	1					1				1			
Prohibition law, violating	89	52	3	5	4			34	9	10	17	1	36	2
Prohibition law, distilling	24	23	1	1	5		14		4	3	11	1	8	1
Prohibition law, possessing still	3	2			1		1			1	2			
Presenting fire arms	1	1								1			1	
Property, injury to	1	1								1			1	
Public drunkenness	16	10		4	2					10	3		7	
Rape	2	1		1			1				1			
Seduction	2			1										
Selling mortgaged property	1			1										
Trespass	2			2										
Vehicle tax, failure to pay	39	1		38						1			1	
Totals	241	135	6	65	15		31	49	14	42	64	2	65	5

Percentage of convictions, 56.01. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BLOUNT COUNTY.

Abandonment	2			2										2
Abusive language	3	1		2						1			2	
Adultery	1			1									1	
Arson, second degree	1		1											1
Assault and battery	15	8	2	5				2		8			8	7
Assault to murder	1	1					1				1			
Assault with weapon	2	2								2			2	
Bastardy	1	1								1			1	
Burglary	2	1		1				1			1			1
Carrying concealed weapon	3	1		2						1			1	2
Disturbing religious worship	6	6								6			6	
Embezzlement	2	1		1					1				1	
Forgery, first degree	2	2								2			2	
Larceny petit	7	2	2	2	1					2			2	5
Manslaughter, first degree	1	1											1	
Murder	3	1	2										1	2
Prohibition law, violating	11	14	3	4						6			14	7
Prohibition law, distilling	29	13	6	10			8			5			13	7
Prohibition law, possessing still	6	2	1	3			2						2	4
Public drunkenness	6	2	1	3						1			2	4
Seduction	1			1										1
Selling mortgaged property	6			6						6				6

CIRCUIT COURT OF BLOUNT COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Shooting across road	1	1								1			1	
Vehicle tax, failing to pay	1		1											1
Totals	113	60	19	43	1		11	3	1	42	2		60	50

Percentage of convictions, 53.09. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BULLOCK COUNTY.

Assault and battery	7	7						1		6	6		1	
Assault to murder	4	3		1			3				3			
Assault to rape	1		1									1		
Burglary	2	2					2				2			
False pretense	2			2										
Forgery, first degree	1			1										

Forgery, second degree	1	1					1				1			
Forgery, third degree	1	1						1			1			
Larceny, grand	7	5	3				3	1			4	2		1
Larceny, petit	2	2						1		1	2			
Manslaughter, first degree	1	2					2				2			
Murder, second degree	1	1					1						1	
Prohibition law, violating	2	1	1							1	1			1
Prohibition law, distilling	28	23	5				23				20	5	3	
Selling property under lien	2	1		1						1	1	1		
Vagrancy	3		1	2								1		
Weapons, carrying concealed	4	4								4	2		2	
Totals	69	53	11	7			35	4		13	45	10	7	2

Percentage of convictions, 76.81. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF BUTLER COUNTY.

Abusive language	2	2						1		1	2			
Arson, first degree	2	1		1			1						1	
Assault and battery	3	2		1						2	2			
Assault to murder	4		1	3								1		
Assault to rape	2	2					2				2			
Assault with weapon	1	1						1			1			

CIRCUIT COURT OF BUTLER COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Burglary	6	3		2	1		1						3	
Carry concealed weapons	15	11	1	2	1			2		9	4	1	7	1
Defamation	1				1									
Disturbing public assembly	1			1										
Disturbing religious worship	2	1	1							1			1	1
Forefeiture of bail	1	1								1			1	
Larceny, grand	2	1	1				1				1	1		
Larceny, petit	1			1										
Miscegenation	2	2					3				2		1	
Murder, first degree	2	1	1				1				1	1		
Murder, second degree	4	2		2			2			1	1			
Prohibition law, violating	19	12	2	5				4		8	6		6	2
Prohibition law, distilling	30	11	1	13	5		6			4	5	1	6	
Prohibition law, possessing still	1			1						1				
Public drunkenness	2	2								2			2	
Rape	2	1			1		1				1			
Seduction	1			1										
Selling mortgaged property	1	1								1			1	

Shooting along public road	1	1								1			1	
Tick law, violating	6	1	1	4						2			2	1
Violating banking law	1		1											1
Totals	115	59	10	37	9		18	8		34	28	5	37	6

Percentage of convictions, 51.3. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CALHOUN COUNTY.

Abusive langauge	1	1						1					1	
Animals, injury to	1			1										
Assault and battery	7	6	1					1		5	4	1	2	
Assault to murder	7	3	5				2				1	2	1	1
Assault to rape	2	2					2				1		1	
Assault with weapon	13	8	4	1						8	4	1	1	2
Auto law, violating	2	2								2	1			
Bastardy	1			1										
Bigamy	2	2					2						1	
Burglary	8	6	1	1			6				4	1	2	
Carnal knowledge	3	1	1	1			1					1	1	
Carrying concealed weapon	2	1	1							1		1		
Defamation	1	1								1				
Embezzlement	2	1		1			1							

CIRCUIT COURT OF CALHOUN COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Escape, aiding to	1		1											
False pretense	2	2						2			1			
Forgery, first degree	3	3					3				1		1	
Larceny, grand	21	16	2	3			16				4	1	9	1
Larceny, petit	3	2	1					1		1	1		1	1
Manslaughter, first degree	3	3					3				2		1	
Medicine, practicing without certificate	1	1								1				
Murder, first degree	3	2		1			2				1			
Murder, second degree	4	4					4				2		2	
Perjury	1	1					1						1	
Presenting firearms	1			1										
Prohibition law, violating	44	35	3	7				18		17	2		17	18
Prohibition law, distilling	18	12	4	1			12						5	1
Prohibition law, attempt to distill	4	4						1		3			4	
Public drunkenness	2	2								2			1	
Seduction	1			1										
Selling mortgaged property	1		1										1	
Shooting across road	1		1											1

Stock law, violating	1		1											
Stolen property, buying, etc.	1	1						1			1			
Trespass	1	1									1		1	
Totals	169	123	27	20			55	25		41	31	8	54	25

Percentage of convictions, 72.78. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CHAMBERS COUNTY.

Abusive langauge	7	5	2							4			4	2
Adultery	1	1						1					1	
Assault	2	2								2	1		2	
Assault to muredr	3	2		1			2				2			
Assault with weapon	9	6		3						6	6			
Auto law, violating	3	1	2									1	1	1
Bastardy	1			1										
Burglary	7	4	1	2			4				3		2	
Carrying concealed weapon	4	3		1						3	3			
Disturbing religious worship	1	1								1	1			
False pretense	4		4	2			1				1	2		
Larceny, grand	8	2	6	2				1			1	1	1	3
Manslaughter, first degree	4	3	1				3				2	1	1	
Manslaughter, second degree	1	1						1			1			

CIRCUIT COURT OF CHAMBERS COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Murder, first degree	4	1	2	1			1						1	1
Murder, second degree	5	4	1				4				2		2	1
Prohibition law, violating	20	5	6	4	5			1		4	2	1	3	5
Prohibition law, distilling	11	6	2	3			5			1	5	1	1	1
Prohibition law, possessing still	23	13	3	6	1		12	3			10	2	3	1
Resisting officer	1			1										
Shooting across public road	1	1								1			1	
Stolen property, buying, receiving, etc.	3	2		1						2			2	
Trespass	1			1										
Vagrancy	2			2							1			
Totals	126	63	30	31	6		32	7		24	41	9	25	15

Percentage of convictions, 50. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CHEROKEE COUNTY.

Abusive language	1		1											1
Adultery	2			2										1
Affray	1		1											1
Animals, injury to	2		2											1
Arson, first degree	1			1										1
Assault	14	8	3	3						8			8	6
Assault to rape	1		1									1		
Bastardy	4	1		2	1					1	1	1		2
Bigamy	2			2										2
Burglary	4	3		1			3						3	1
Carrying concealed weapons	3	2	2	1						1			1	2
Disturbing religious worship	1	1								1			1	
False pretense	5	2		3						2			2	1
Forgery, first degree	2	1		1			1						1	1
Larceny, grand	2			2										2
Larceny, petit	4			4	1									5
Manslaughter, first degree	16	8		3						8			6	5
Murder, first degree	2	2	4				2				2			
Murder, second degree	7	5					5				4		1	
Practicing medicine without license	4			4						2			2	
Prohibition law, violating	18	9	4	3	2			3	2	4			9	7
Prohibition law, distilling	39	20	6	13			20				3	2	15	3
Public drunkenness	15	7	3	5						7	1		6	7

CIRCUIT COURT OF CHEROKEE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Road law, violating	1		1											1
Road, public, obstructing	1		1											
Selling property under lien	4	1		4	1		1						1	
Totals	156	70	29	53	5		33	3	2	34	11	4	66	56

Percentage of convictions, 44.87. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CHILTON COUNTY.

Abusive language	8	4	1	3						2			3	
Adultery	2				2									
Assault and battery	9	7	2							1			7	2
Assault with weapon	2	2						1			1			
Bastardy	2	2		2										
Burglary	1	1					1				1			

Carnal knowledge	2	1	1										1	1
Carrying concealed weapon	6	3		3							2		1	
Disturbing public worship	7	3	3	1						2	1		2	2
False pretense	2			2										
Larceny, grand	7	3	3	1			3				3			3
Larceny, petit	7	4	1	2				2			2	1	2	
Manslaughter, first degree	2	2						1			1		1	
Murder, second degree	2			1										
Prohibition law, violating	61	37	13	16	1			4	1	17	6		30	6
Prohibition law, distilling	8	2	4	2			2						2	
Prohibition law, possessing still	37	21		13	1		13	4			8		6	
Public property, injury to	2		1	1										
Public drunkenness	3	1		2									1	
Resisting officer	3			3										
Road law, violating	5	1		2						1			1	
Tick law, violating	25			25										
Trespass	4	1	1	2							1			
Vagrancy	1			1										
Violating sanitary law	1			1										
Totals	209	95	30	83	4		19	12	1	23	26	1	57	14

Percentage of convictions, 45.45. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CHOCTAW COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive langauge	3	2		1						2	2			
Animals, injury to	2	1	1							1	1			
Assault and battery	1	1								1			1	
Assault to murder	1				1									
Assault to rob	3	2		1						2			2	1
Assault with weapon	4	3	1							4	4			
Auto law, violating	2	2								2	2			
Burglary	4		1	3								2		
Carrying concealed weapon	5	4	1		1					4	3	1	1	
Checks, issuing worthless	1			1										1
Disturbing religious worship	1	1								1			1	
False pretense	2	1		1										2
Firearms, presenting	1		1											1
Hunting without license	3			1	2						1			
Larceny, grand	1			1										
Larceny, petit	3	2						2		1	1	2		
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1							1	1	1			

Medicine, practicing without certificate	1			1										
Murder, first degree	2			2										2
Prohibiaition law, violating	48	13	6	28	2					13	10	8	3	3
Prohibition law, distilling	18	9	2	4	3		6			3	7	2	2	1
Public drunkenness	6	2		2						2	2		1	2
Resisting officer	1			1										1
Road law, violating	2	1	1							1			1	1
Sunday law, violating	1			1								1		
Tick law, violating	25	2	3	2						2			2	3
Trespass	1		1											
Totals	145	48	18	51	9		7	2	1	40	35	16	14	18

Percentage of convictions, 33.10. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CLARKE COUNTY.

Abusive langauge	7	7								7	2		5	
Animals, injury to	1			1								1		
Assault and battery	13	8	4	1						8	5		3	4
Assault to murder	2	1			1		1				1	1		
Assault with weapon	4	4								4	4			
Burglary	3	1		1	1			1			1	2		
Carrying concealed weapon	12	11		1				4		7	9		2	1

CIRCUIT COURT OF CLARKE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Checks, issuing worthless	3	2		1						2			2	
False pretense	2	1		1						1	1	1		
Game law, violating	1			1								1		
Larceny, grand	3	1		2				1			1	1		1
Larceny, petit	6	6							3	3	5		1	
Livestock law, violating	23		3	20								2		21
Manslaughter, first degree	2	1	1				1				1			1
Medicine, practicing without certificate	6		5	1										6
Murder, first degree	2	1	1				1				1			1
Murder, second degree	2	2					2				1		1	
Presenting gun	1		1											1
Prohibition law, violating	25	17	3	3	2		2			17	11	1	5	2
Prohibition law, distilling	31	14	2	6			1			13	11	3	4	5
Prohibition law, possessing still	5	1	3	1			1					1	1	3
Public drunkenness	4	1	1	2						1	1			3
Revenue law, violating	2			2										2
Road law, violating	7	2	2	3						2	2	5		

Selling mortgaged property	2	1		1					1		1	1		
Shooting along public road	1	1					1			1				
Totals	170	83	26	48	4	9	7	3	66	58	20	25	51	

Percentage of convictions, 48.82. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CLAY COUNTY.

Abusive language	12	9		2	1					9			8	1
Assault	6	2		4						1	1		1	1
Assault and battery	2	2								2			1	1
Assault to murder	5	2		2	1		2					2	2	1
Assault with weapon	9	7		1	2					7			4	1
Bail forfeiture	2	1			1					1				
Bastardy	1			1								1		
Burglary	15	5		3	7		5						5	
Carnal knowledge	1			1										1
Carrying concealed weapon	3	1	1	1						1			1	3
Embezzlement	1			1										1
False pretense	2			2										1
Incest	2	1		1			1						1	
Larceny, grand	5	3	1		1		3					1	4	
Larceny, petit	9	6		1	2			1	3	2	1		4	

CIRCUIT COURT OF CLAY COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Manslaughter, first degree	1	1						1					1	
Murder	2	1			1		1						1	
Prohibition law, violating	8	2	1	5						2			2	3
Prohibition law, distilling	40	26	5	9			14			12	2		24	15
Property, injury to	1			1										
Public drunkenness	12	3		8	1					3			3	7
Rape	1	1					1						1	
Road law, violating	1		1									1		
Seduction	4	1	1	2			1						1	2
Selling mortgaged property	3			3										3
Receiving stolen property, etc.	1	1								1			1	
Totals	149	75	10	48	17		28	2	3	41	4	5	65	41

Percentage of convictions, 50.33. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CLEBURNE COUNTY.

Affray	2	2								2			4	
Assault	3	2		1						2				
Assault to murder	1	1					1						1	
Assault with weapon	2	2								2				
Auto law, violating	1	1								1				1
Burglary	2	2					2							
Carnal knowledge	1	1					1						1	
Carrying concealed weapon	2	2								4	1		2	
Disturbing religious worship	2	2								2			2	
Larceny, grand	2			2										
Manslaughter, first degree	2	2					2				1		1	2
Murder, first degree	2	2					2						2	
Prohibition law, violating	6	4	1	1						4	1		3	1
Prohibition law, distilling	45	33	9	3			33				1		23	3
Prohibition law, attempt to distill	12	12								12			12	
Public drunkenness	14	10	1	3						10			6	
Totals	101	80	11	10			41			39	4		57	7

Percentage of convictions, 79.20. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF COFFEE COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.			Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	10	7	1	1						8	1		9	1
Adultery	2	2								2				
Assault and battery	22	19		3				3		16	5		14	
Assault to murder	9	4	3	1	1		4				2		2	3
Assault with weapon	2	2						2			2			
Auto law, violating	4	2	2							2	1		1	2
Bastardy	2	2						1		1			2	
Burglary	1	1					1				1			
Carrying concealed weapon	11	9		1	1			1		8	3		6	
Checks, issuing worthless	2	2						2					2	
Disturbing religious worship	1	1								1		1		
Embezzlement	1	1		1										
Ecape	1	1						1			1			
False pretense	7	2		3	1		1			1	1		1	
Forgery, first degree	2				2									
Larceny, grand	4	3		1			3				1		2	
Larceny, petit	2	2								2			2	
Malicious mischief	4	2	1	1						2			2	1

Murder, first degree	1			1			1						1	
Murder, second degree	1	1					1						1	
Prohibition law, violating	65	49	5	10	1			19		30	11		38	5
Prohibition law, distilling	8	4	3	1			4				2		2	3
Public drunkenness	4	3		1						3	1		2	
Road law, violating	1		1											1
Seduction	1			1										
Selling mortgaged property	3	1	1	1						1			1	1
Selling property under lien	2			2										
Stock law, violating	1		1											1
Tick law, violating	11	11		11										
Violating banking law	1			1										
Vagrancy	2			2										
Totals	188	131	18	43	6		16	29		109	32	1	88	18

Percentage of convictions, 69.68. **Predominant crime, Violating Prohibition Law.**

CIRCUIT COURT OF COLBERT COUNTY.

Abusive language	6	3		3						3			3	
Adultery	3	2		1						2			2	
Arson, first degree	1		1											
Arson, second degree	1			1										

CIRCUIT COURT OF COLBERT COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault	9	6	2	1						7	6		1	
Assault to murder	7	3	1	3			3						3	
Burglary	7	5	1	1			4	1			4		2	
Cruelty to animals	1	1								1	1			
Carrying concealed weapon	5	3		4				1		6	3			
Disturbing religious worship	1	1								1			1	
Embezzlement	1			1						1	1			
False pretense	4	1		3										
Gaming, table keeping	6		6									6		
Hunting without license	1	1								1	1			
Larceny, grand	7	7					7				7			
Larceny, petit	1			1										
License, doing business without	1	1								1	1			
Medicine, practicing without certificate	1	1								1			1	
Murder, first degree	2	1	1				1				1		1	
Property, injury to	1		1											
Prohibition law, violating	26	15	7	4				1		14	8	1	7	4
Prohibition law, distilling	10	7	2	1			7			1	1		7	

Public drunkenness	2	2								1			1		
Receiving stolen property	2	1		1						1	1				
Rape	1		1												
Selling mortgaged property	2		2												
Shooting into dwelling	1	1						1			1				
Totals	109	62	25	25			22	4		31	36	7	29	4	

Percentage of convictions, 56.88. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CONECUH COUNTY.

Animals, injury to	1			1											
Assault and battery	8	4	2	2						4	2	1	2	1	
Assault to murder	2	1			1		1				1				
Assault with weapon	4	4								4	1		3		
Burglary	5	4	1				4				4			1	
Carrying concealed weapon	5	3	1	1						3	1		3		
Carnal knowledge	2	1		1						1	1				
Changing mark or brand	1		1									1			
Decoying child	1	1						1			1				
Forgery, second degree	2	2					2				2				
Gaming	2				2										
Larceny, grand	5			4	1										

CIRCUIT COURT OF CONECUH COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Larceny, petit	6	4		1	1					4	4			
Manslaughter, first degree	1	1					1				1			
Murder, second degree	1	1					1				1			
Prohibition law, violating	26	11	2	3				2		19	8		13	2
Prohibition law, distilling	4	1		1	2		1				1			
Prohibition law, possessing still	1	1					1				1			
Rape	1			1										
Selling mortgaged property	2			2										
Sunday law, violating	2	2								2	2			
Stock law, violating	2	2								1			1	1
Tick law, violating	4			4										
Trespass	1		1								1			
Totals	89	43	8	21	7		11	3		38	32	2	22	5

Percentage of convictions, 48.31. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF COOSA COUNTY.

Abusive langauge	4	4								4	1		3	
Abusive language before women	1						1	1		2	2		1	3
Assault	2	2								2	1		1	
Assault to rape	2	1		1			1				1			
Assault to murder	5	5		2				1		1	1			
Assault with weapon	8	6		3						5	2		3	
Bastardy	2		1	1								1		
Burglary	3	3					3						1	
Carrying concealed weapon	2	2						1		1	2			
False pretense	1			1										
Gaming	5	4		1						1	4			
Incest	1			1										
Larceny, grand	2	2					2				1			
Larceny, petit	2	2								2	1		1	
License, doing business without	1	1												
Medicine, practicing without certificate	2	2								2			2	
Murder, first degree	2	1		1			1				1			
Prohibition law, violating	20	9	3	7	1		1			5			5	
Prohibition law, distilling	10	9		1			5			4	1		8	
Presenting gun	1			1										
Rape	1			1										
Selling mortgaged property	2	1		1			1				1			

CIRCUIT COURT OF COOSA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Stolen property, buying, etc.	3	3								1			1	
Vagrancy	2		1	1						1	1			
Totals	87	57	5	23	1		15	3		31	20	1	26	3

Percentage of convictions, 65.52. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF COVINGTON COUNTY.

Abusive language	25	20		5						20			20	
Animals, failure to bury	1	1											1	
Arson, first degree	2	1	1						1			1		1
Arson, second degree	3		1	2										1
Assault and battery	15	10	2	3				4		6	1		9	2
Assault to murder	14	6	6		2		6				3	1	3	5
Assault with weapon	3	3						1		2			3	

Bastardy	4	2		2					2			2	
Bigamy	1	1				1						1	
Burglary	2	2				2				1		1	
Carnal knowledge	1			1									
Carrying concealed weapon	10	4		6			1		3	1		3	
Checks, issuing worthless	2			1	1								
Crime against nature	1	1				1						1	
Disturbing religious worship	5	3	2						3			4	2
Disturbing school	2	2							2			2	
Embezzlement	2		1	1									1
Escape	2	2				1	1					1	
False pretense	2	1		1					1			1	
Forgery, first degree	3	1		2		1						1	
Forgery, second degree	2	1		1		1						1	
Gaming	1	1							1			1	
Larceny, grand	7	3	1	2	1	3						3	1
Larceny, petit	5	3		2					3			3	
Malicious mischief	4	2	1	1					2		1	2	
Manslaughter, first degree	4	4				4				1		3	
Murder, first degree	2		1			1						1	1
Murder, second degree	10	8		2		7				3		4	1
Prohibition law, violating	54	31	10	10	2		19		12	5	1	22	13
Prohibition law, distilling	15	14	1			14				1		7	7
Resisting officer	1	1							1			1	
Road law, violating	1	1							1			1	
Seduction	1			1									

CIRCUIT COURT OF COVINGTON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Selling mortgaged property	3	1		2						1			1	
Selling property under lien	1		1											1
Tick law, violating	13			12	1									
Trespass	1			1										
Vagrancy	1	1								1			1	
Totals	226	131	28	58	7		42	26	1	61	16	4	104	36

Percentage of convictions, 57.96. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CRENSHAW COUNTY.

Abusive language	3	2		1						2			2	1
Adultery	1			2										
Animals, injury to	1													1
Arson, first degree	1			1										1

Assault and battery	2	2								2			2	
Assault to murder	2		1	1						1		1	1	
Assault with weapon	2	1			1									
Bail, forfeiture	9	11								9	2		7	
Bastardy	2	2								2	1		1	
Burglary	2	1			1		1				1			
Carnal knowledge	2			2								1		1
Carrying concealed weapons	8	4	2	2				1		3	2	1	2	2
Defacing public building	1			1										
Disturbing religious worship	1		1											1
Extortion	1			1										1
False pretense	6		1	3	2							1		1
Forgery, second degree	1	1					1						1	
Gaming	6	4		2				2		2		2	4	
Hunting without license	5				5							5		
Incest	1	1					1				1			
Larceny, petit	4	3		1						3	1		2	
Manslaughter, first degree	2	2					2						2	
Medicine, practicing without certificate	1				1							1		
Murder, first degree	1		1											1
Murder, second degree	1		1											1
Prohibition law, violating	21	9		10	2					9	4	1	5	6
Prohibition law, distilling	16	3	3	10			3					1	3	8
Prohibition law, possessing still	1				1									
Public drunkenness	1				1									1
Revenue law, violating	5			5										

CIRCUIT COURT OF CRENSHAW COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Road obstructing	1		1											1
Selling mortgaged property	3	2		1									2	
Vagrancy	1				1									
Totals	115	48	11	43	15		8	3		33	12	12	36	27

Percentage of convictions, 41.73. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF CULLMAN COUNTY.

Abusive language	1	2								2			2	
Animals, injury to	1	1								1			1	
Assault and battery	1			1										
Assault to murder	2	1		1			1						1	1
Assault with weapon	4	4								4			2	
Bastardy	1		1											

Burglary	1			1										1
Carnal knowledge	1			1										
False pretense	2		1	1										1
Forgery, first degree	1			1						3				
Larceny, grand	1			1										
Larceny, petit	3	3							3	3			3	
License law, violating	1			1										
Mortgaged property, disposing of, etc.	5			5										1
Murder, second degree	2	2					2						2	
Prohibition law, violating	2	2								2			2	
Prohibition law, distilling or attempt to	30	24	3	3			17			7			21	2
Public drunkenness	5	3		2						1			1	2
Road law, violating	5			5										
Totals	69	42	5	23			20		4	23			35	8

Percentage of convictions, 60.86. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF DALE COUNTY.

Abusive language	1	1								1			1	
Adultery	1	1						1					1	
Animals, injury to	1			1										
Assault and battery	5	5								5	1		1	3

CIRCUIT COURT OF DALE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.			Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to rape	1	1					1						1	
Burglary	1			1										
Carrying concealed weapons	1	1								1			1	
Disturbing religious worship	1		1									1		
Embezzlement	1			1										
False pretense	1			1										
Forgery, first degree	1			1										
Incest	1	1					1				1			
Larceny, grand	1	1					1						1	
Larceny, petit	2		2											2
License, doing business without	2	1	1							1			1	1
Manslaughter, first degree	1	1					1						1	
Murder, assault to	1			1										
Murder, first degree	1			1										
Murder, second degree	1		1											1
Perjury	1			1										
Profane language in the presence of women	1	1								1			1	
Prohibition law, violating	13	2	1	1						2			2	1

Prohibition law, distilling	8	5	2	1			5			1	1	4	1	
Prohibition law, possessing still	2	2					2					2		
Seduction	1		1										1	
Selling property under lien	1			1										
Totals	52	23	9	11			11	2		11	3	2	17	11

Percentage of convictions, 44.23. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF DALLAS COUNTY.

Abusive language	3	1		2						1			1	
Adultery	2	2								2			2	
Animals, injury to	2	1	1					1			1			
Arson, first degree	1			1										
Arson, second degree	1	1						1			1			
Assault and battery	12	7	1		1			4		6	7		1	
Assault to murder	17	6	3	6	2		6				4		1	2
Assault with weapon	19	14	1	1	3			4		6	3	3	1	
Auto law, violating	4	1		3						1	1			
Bribery, attempt at	1				1									
Burglary or attempt at	21	12	1	7	3		4	6			8	1	1	1
Carnal knowledge	2													
Carrying concealed weapon	53	39	2	8	4			19		23	22		5	

CIRCUIT COURT OF DALLAS COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.			Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Checks, issuing worthless	1			1										
Counterfeiting	2		1		1									1
Defacing building	3	2		1				2			2			
Embezzlement	4	1		2	1		1						1	
Escape, or aiding to	1	1					1				1			
False pretense	12	8		4				8					7	
Forgery, first degree	7	5		1	1			5			2		3	
Gaming	3			3										
Larceny, grand	32	21	5	4	2		10	12			16	1	1	1
Larceny, petit	8	5		4				1		3	3			
Manslaughter, first degree	5	5					1	3		2	4			
Miscegenation	2				2									
Murder, first degree	6	5		1			5				5			
Perjury	3		1		2									
Presenting gun	5	3			2			2					3	
Prohibition law, violating	94	63	7	10	10			25		48	37	5	16	
Prohibition law, distilling	38	28	4	8	2		28				18	1	3	
Prohibition law, distilling, attempt at	9	9								9				

Rape or attempt to	2	1		1			1				1			
Resisting officer	1	1								1			1	
Road law, violating	7	3		2	2					3			2	
Sending abusive letters	1	1						1			1			
Selling mortgaged property	1	1						1						
Seduction	1				1									
Sunday law, violating	1	1								1			1	
Tick law, violating	1	1								1				
Tools, burglars', possessing	1	1						1					1	
Medicine, practicing without license	4				4									
Totals	394	250	28	70	44		57	96		107	137	11	51	6

Percentages of convictions, 63.45. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF DEKALB COUNTY.

Abusive language	6	6								1			1	
Assault	2	2								2			2	
Assault and battery	1	1								1			1	
Assault with weapon	1	1								1			1	
Carrying concealed weapon	2	2								2			2	
Cock fighting	1	1								1			1	
Defamation	1	1								1			1	

CIRCUIT COURT OF DEKALB COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Negro.		White.	
											Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Disturbing religious worship	4	4								4			4	
Larceny, petit	1	1								1			1	
Manslaughter	1	1		1				1					1	
Prohibition law, violating	20	20						7		13			20	
Prohibition law, distilling	1	1						1					1	
Property, injury to	1	1								1			1	
Public drunkenness	25	25								25			25	
Road law, violating	1	1								1			1	
Vagrancy	1	1								1			1	
Totals	69	69						9		55			64	

Percentage convictions, 100. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF ELMORE COUNTY.

Abandonment	1			1										
Adultery	3			1	2									
Arson, second degree	1	1					1				1			
Assault and battery	5	4		1						1	1		3	
Assault to murder	6	1	1	1	4		1				1			1
Assault with weapon	6	4			1					4	1		3	
Bastardy	5	5	1	1	1					1	2			1
Burglary	4			1			3				2		1	
Carrying concealed weapon	7	4		1	2					2	1		3	
Disturbing religious worship	3	2		1						2			2	
Escape	9	4		5			3				1		3	
False pretense	1				1									
Forgery, first degree	2	2					2				2			
Forgery, third degree	3	3					3				2		1	
Larceny, grand	16	11	2	2			11				8	1	3	1
Larceny, petit	2	2									2			
Language, abusive	2			2										
License, doing business without	1	1											1	
Malicious injury to animals	3	2			1					1	1		1	1
Manslaughter, first degree	2	1	1				1				1	1		
Murder, first degree	2	2					2				2			
Murder, second degree	3	2		1			2				2			
Perjury	3				3									

CIRCUIT COURT OF ELMORE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Prohibition law, violating	20	12	2	6			2	1		3	2	1	10	1
Prohibition law, distilling	11	5									3		2	2
Prohibition law, possessing still	47	30	4	4			24	4		2	11		17	
Property, using without permission	1	1											1	
Road law, violating	2			2										
Seduction	1			1										
Trespass	3		2		1							1		1
Vagrancy	2			1	1									
Totals	166	94	13	32	17		55	5		16	46	4	51	8

Percentage of convictions, 56.62. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF ESCAMBIA COUNTY.

Abusive language	9	8		1						8			8	

Animals, injury to	1			1										
Arson, third degree	1		1											1
Assault and battery	10	10								10	2		8	
Assault to murder	1	1					1						1	
Assault to rape	1	1					1				1			
Assault with weapon	11	5		6				1		4	1		4	
Auto law, violating	2		1	1										1
Burglary	2	2					2				2		1	
Carrying concealed weapon	4	1		2	1					1				
Checks, issuing worthless	2				2									
Disturbing religious worship	1	1								1			1	
Forgery, first degree	2	1	1				1				1	1		
Forgery, second degree	5	3		2			3				1		1	
Forgery, third degree	1				1									
Larceny, grand	6	4	1		1		4				2		2	1
Larceny, petit	6	5		1						5	2		3	
Manslaughter, first degree	3	1	1				2				1		1	1
Murder, first degree	1	1					1						1	
Murder, second degree	2	2					2				1		1	
Prohibition law, violating	20	10	2	8						10	5	1	3	3
Prohibition law, distilling	11	5		6			5				3		2	
Public drunkenness	2	2								2			2	
Robbery	1			1										
Seduction	1	1					1						1	
Selling mortgaged property	3	1		2						1			1	
Shooting into dwelling	1				1									

CIRCUIT COURT OF ESCAMBIA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Stolen property, selling, etc.	2	2								2	2			
Quarantine law, violating	12	3		8	1					3			3	
Tick law, violating	4			4										
Trespass	2			2										
Totals	130	70	7	45	7		23	1		47	24	2	44	7

Percentage of convictions, 53.84. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF ETOWAH COUNTY.

Abusive language	20	12		8						12	1		1	
Adultery	1			1										
Arson, attempting	3	1		2			1			5			1	
Assault	1	1								1				
Assault and battery	39	22	2	16				2		15	2		4	

Assault to murder	6		1	5										
Assault to rape	2			1										
Assault with weapon	1			1										
Auto law, violating	1	1								1				
Bastardy	3	2			1					2			1	
Bigamous cohabitation	1	1					1							
Burglary	10	1	3	6				1			1		1	
Carnal knowledge	1				1									
Carrying concealed weapon	1	1								1				
Changing name to conceal identity	2	1		1						1				
Checks, issuing worthless	5	2		4						1				
Conspiracy	2			2										
Defamation	1			1										
Disturbing religious worship	6	5		1			2			3	2			
Embezzlement, or attempt at	2	1	1	1						1				
False pretense	6			4	1				1	1				
Forgery	5	2		3			2						2	
Forgery, second degree	2	2					2						1	
Gaming on Sunday	9	9								9				
Larceny, grand	8	2	2	4			1	1						
Larceny, petit	22	9	1	12				4	4	7	1		1	
Medicine, practicing without license	1	1								1				
Murder, first degree	4	3	1				3				2		1	1
Murder, second degree	5	1	1	3			1				1			
Non-support	2	1		1				1						
Peace proceedings	5			5										

CIRCUIT COURT OF ETOWAH COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Perjury	1		1											
Presenting gun	1			1										
Prohibition law, violating	43	21	3	21				4		20			4	1
Prohibition law, distilling	46	18	2	21	5		18						3	4
Public drunkenness	5	3	1	1						3				
Rape	1			1										
Robbery	1		1											1
Seduction	3			2	1									
Selling mortgaged property	2		1	2										
Sunday law, violating	15	14	3							14				
Trespass	1		1											
Vagrancy	1			1										
Totals	297	137	25	132	9		31	13	5	98	10		20	7

Percentage of convictions, 46.12. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF FAYETTE COUNTY.

Abusive language	18	9	2	6	1					9			9	2
Assault and battery	18	12	1	4	1					12			12	1
Assault to murder	6	6					1			4			6	
Assault with weapon	1	1								1				1
Burglary	3			1	2									
Carnal knowledge	1	1								1			1	
Carrying concealed weapon	3		1	2										1
Disturbing religious worship	4			4										
Disturbing school	7	7								7			7	
False pretense	1			1										
Forgery, attempt	2	1									1		1	
Gaming	4			4										
Larceny, grand	1			1										
Larceny, petit	8	6		2				2		6	4		2	
Manslaughter, first degree	4	4					3			1	1		3	
Murder, first degree	5	5					4						5	
Murder, second degree	1		1											
Prohibition law, violating	31	18	3	7	3			2		16	1		17	3
Prohibition law, distilling	83	31	13	18	7		28	5	1	15	1		35	11
Public drunkenness	20	11	1	11						11			11	1
Rape, attempt	1	1								1			1	

CIRCUIT COURT OF FAYETTE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Robbery	2				2									
Tick law, violating	11		1	10										
Totals	235	113	23	71	16		36	9	1	84	8		110	20

Percentage of convictions, 48.08. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF FRANKLIN COUNTY.

Abusive language	2	1			1					1			1	
Arson	2		1											1
Assault	3			3										
Assault to murder	6	3		3			3						3	
Assault to rape	2	1		1			1						1	
Assault to rob	1	1					1						1	
Assault with weapon	5	2		1						4			4	

Burglary	3	1		1	1									
Carnal knowledge	1	1				1							1	
Carrying concealed weapon	2	1		1						1			1	
Disturbing religious worship	4	2		2						2			2	
Doing business without license	1	2		3						2			2	
Embezzlement	3			3										
False pretense	4			3	1									
Forgery	1			1										
Larceny, grand	2		1	1										2
Larceny, petit	1			1										1
License, practicing medicine without	1			1										
Manslaughter, first degree	1	1					1						1	
Mayhem	1			1										
Murder, first degree	1	1					1						1	
Murder, second degree	5	3	2				3					1	3	1
Perjury	3		2	1										2
Presenting gun	1			1										
Prohibition law, violating	15	7		5	3		5			2			7	
Prohibition law, distilling	16	11	1	4			9	1		1			11	1
Prohibition law, possessing still	5	3	1	1			3						2	2
Public drunkenness	6	2	1	3						2			2	1
Robbery, highway	1	1					1						1	
Seduction	4	1		3			1						1	

CIRCUIT COURT OF FRANKLIN COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Selling mortgaged property	1			1										
Vagrancy	1		1											1
Totals	105	35	10	45	6	1	29	1		15		1	45	12

Percentage of convictions, 33.33. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF GENEVA COUNTY.

Abusive language	1			1										1
Adultery	3	2	1					1		1			2	1
Arson, second degree	1			1										1
Assault and battery	5	4		1						1	2		1	2
Assault to murder	1			1										1
Assault with weapon	4	4								4	1		3	
Bigamy	1	1					1				1			

Burglary	6	3	1	1	1		3				3			3
Carnal knowledge	1	1					1						1	
Carrying concealed weapon	5	3		2						2		1	2	1
Disturbing religious worship	4	3		1				1		2	1		2	1
Embezzlement	1			1										1
False pretense	3			2	1									3
Forgery, second degree	1	1					1						1	
Larceny, grand	4	1		4			1				1	1	1	3
Larceny, petit	3	2		1				1		1	1		1	1
Malicious mischief	1	1								1			1	
Manslaughter, first degree	3	3					3				1		1	
Manslaughter, second degree	1	1						1					1	
Murder, first degree	6	6					7				3		4	
Murder, second degree	1	1												
Perjury	1			1								1		
Presenting gun	7		6	1								1		7
Prohibition law, violating	16	7	1	9				1		5	4	1	4	5
Prohibition law, distilling	15	7	3	3			7				1	1	4	9
Prohibition law, possessing still	13	5	3	4			5				2		4	5
Public drunkenness	9	4	1	4						1			4	5
Road law, violating	7		3	3						1			1	6
Seduction	1		1											1
Selling property under lien	2			2										2

CIRCUIT COURT OF GENEVA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Tick law, violating	18	5	2	11						3			4	14
Vagrancy	2			2										2
Totals	147	65	22	56			29	5		26	20		42	75

Percentage of convictions, 44.21. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF GREENE COUNTY.

Abusive language	7	7								7	4		3	
Animals, injury to	2	2								2	2			
Assault and battery	18	18								18	17		1	
Assault to murder	4	1	1	1	1		1				1	1		
Assault with weapon	13	13						6		8	13			
Burglary	2	2					2				2			
Carrying concealed weapon	16	11	1	4				2		8	11	5		

Defacing jail	1	1						1			1			
Disturbing religious worship	2	1	1							1	1	1		
False pretense	3	2		1						2	2			
Forgery, first degree	1	1					1				1			
Larceny, grand	5	4		1			4				4			
Larceny, petit	3	3									3	2		
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1						1					1	
Murder, first degree	2		2											1
Murder, second degree	2	2					2				2			
Presenting gun	1	1								1	1			
Prohibition law, violating	27	20	4	3				9		7	14	3	3	1
Prohibition law, distilling or attempt	4	3	1								1	1		
Prohibition law, possessing still	7	7					7			2	8		1	
Public drunkenness	2	2								2			2	
Road law, violating	14	11		2						11	7		4	
Shooting into dwelling	1			1										
Shooting on train	2	2						1		1	2			
Stolen property, buying, etc.	1	1								1	1			
Totals	142	117	10	13	1		18	20		71	99	13	15	2

Percentage of convictions, 82.39. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF HALE COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	3	3								3	2		1	
Assault and battery	1	1								1	1			
Assault to murder	5	1	1	2	1		1				1			1
Assault with weapon	11	11						6		11	9		2	
Auto law, violating	1			1										
Burglary	1	1					1				1			
Carrying concealed weapon	9	6		1	2			4		4	6			
Embezzlement	2	2						1	1	1	2			
Escape	1			1										
False pretense	1	1								1	1			
Forgery, first degree	8	2			6		2				2			
Larceny, grand	4	2		2			1	1			2			
Larceny, petit	7	5		2				2	2	4	4			
Manslaughter, first degree	1	1					1				1			
Murder, first degree	1	1					1				1			
Murder, second degree	2	2					2				2			
Presenting gun	4	2		1	1					1	1		1	
Prohibition law, violating	21	12	1	5	4			3	1	12	7		4	2

Prohibition law, distilling	11	10					7			3	9		1	
Prohibition law, possessing still	1	1					1				1			
Property, injury to	6				6									
Resisting officer	2	1			1					1	1			
Road law, violating	2	2						1		2	2			
Robbery	1	1					1				1			
Stolen property, buying, etc.	3			1	2									
Vagrancy	1	1								1	1			
Totals	110	69	2	16	23		18	18	4	45	58		9	3

Percentage of convictions, 62.72. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF HENRY COUNTY.

Abusive language	1	1								1			1	
Adultery	1			1								1		
Assault and battery	8	6		1						6	1		5	1
Assault with weapon	8	7		1						7	5		2	1
Assault to murder	7	4		3			3			1	2		2	3
Bastardy	1		1											1
Burglary	3	1		1			1	1			1	1		1
Carrying concealed weapon	13	9		2	1					9	2		4	7
Checks, issuing worthless	1			1										1

CIRCUIT COURT OF HENRY COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Embezzlement	1			1										1
Forgery, first degree	1	1					1				1			
Gaming	1	1								1	1			
Hunting without permit	2	1		1						1			1	1
Incest	1			1									1	
Larceny, grand	1	1					1				1	1		
Larceny, petit	6	5		1						5	2		3	
Manslaughter, first degree	4	3	1				3				3			1
Murder, first degree	5	2	1	2			2				2	2		1
Murder, second degree	3	3					3				2		1	
Presenting gun	1	1								1			1	
Prohibition law, violating	6	2	1	2						2	1		1	4
Porhibition law, distilling	13	10		3			10				4	2	6	1
Prohibition law, possessing still	1		1											1
Public drunkenness	5	2	2	2						1		1		4
Rape	1			1									1	
Resisting officer	1			1										1
Road law, violating	4				4									4

Selling mortgaged property	1			1										1
Trespass	1	1								1			1	
Totals	102	61	7	26	5		24	1		36	28	8	30	35

Percentage of convictions, 59.80. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF HOUSTON COUNTY.

Abusive language	5	5								5	1		1	3
Assault and battery	20	14	5	1						14	2		10	7
Assault to murder	3	1		2			1						1	
Auto law, violating	4	2		2				2			1	2	1	
Burglary	2	1	1								1			1
Carnal knowledge	2	1		1			1				1			1
Carrying concealed weapon	3		2	1										3
Checks, issuing worthless	5		1	4						1			1	4
False pretense	1	1		1										1
Forgery, first degree	2	1		1			1				1			1
Gaming	1													
Larceny, grand	4	2	2				1				2	2		
Larceny, petit	1	1											1	
License, doing business without	1												1	
Malicious mischief	1			1								1		

CIRCUIT COURT OF HOUSTON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Manslaughter, first degree	1	1					1						1	
Medicine, practicing without license	2		1	1									2	
Manslaughter, second degree	1			1										1
Murder, first degree	1			1										1
Murder, second degree	1	1					1						1	
Presenting gun	1			1										1
Prohibition law, violating	34	19	3	12				1		12	2	2	11	2
Prohibition law, distilling	7	1	1	5									1	6
Public drunkenness	4	1	1	2						1			1	3
Robbery	5	1	1	3						1		1	1	3
Seduction	1	1									1			
Selling mortgaged property	1			1										1
Sunday law, violating	1	1											1	
Tick law, violating	8	2		6						2			2	6
Totals	124	57	18	48			6	3		36	12	8	37	46

Percentage of convictions, 45.96. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF JACKSON COUNTY.

Abortion, criminal	1			1										1
Abusive language	9	2	1	6						3	1	1	2	5
Adultery	1			1										1
Affray	1	1								1			1	
Animals, injury to	3	1		2						1			1	
Assault	8	5		3						5			5	3
Assault and battery	6	3		3						3			3	1
Assault to murder	4	2		2			1			1			2	2
Assault to rape	1	1								1	1			
Assault with weapon	4	4								4	1		3	
Bastardy	4	5		1						4	1		3	1
Burglary	22	11	2	9			10		1	1	2	1	9	10
Carnal knowledge	1			1								1		
Carrying concealed weapon	8	4	1	4				2		3	1	1	4	4
Disturbing religious worship	11	2		10						1	1			10
Embezzlement	1		1											1
Escape	1			1								1		
False pretense	5	1		5			1						1	5
Forgery	3			3										3
Game law, violating	1	1								1	1			
Gaming	1			1										1
Larceny, grand	12	3	2	6	1		3					4	3	6
Larceny, petit	11	5	3	2						4	2	2	3	4

CIRCUIT COURT OF JACKSON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Manslaughter, first degree	3	3					2	1			1		2	
Murder, second degree	6	3	2	1			3				2	1	1	2
Perjury	1		1											1
Presenting gun	1	1								1			1	
Prohibition law, violating	49	22	1	25	2			13		18	3	7	13	26
Prohibition law, distilling	75	33	7	26	2		23				1	2	21	22
Public drunkenness	10	4		12	1		10			4	1		13	15
Retailing drugs	1			1										
Retailing	5	5		1				1		3			4	1
Roal law, violating	1			1									1	1
Seduction	6	3		2			4						2	3
Selling mortgaged property	1			1										1
Stolen property, buying, etc.	1			1										1
Vagrancy	1			1										1
Totals	279	125	21	133	6		57	17	1	59	19	21	108	132

Percentage of convictions, 44.80. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF JEFFERSON COUNTY.

Abortion	1			1										
Abusive language	11		1	10										
Adultery	8		3	5										
Animals, injury to				1										
Arson, first degree	3		3											
Assault	5		1	4										
Assault and battery	29	7	4	15	3			2		5				
Assault to murder	102	27	22	47	4		5	16		4				
Assault to rape	4		2	1										
Assault to rob	5	2		3			2							
Assault with weapon	32	10	4	13	3			1		9				
Auto law, violating	24	5	5	14						5				
Bastardy	22	5	1	16				2		2				
Bigamy	4	1		4			1							
Breach of peace	3			1	1									
Burglary or attempt	236	103	24	69	5		42	50		1				
Burning insured dwelling	9			9										
Carnal knowledge	15	1	4	4			1							
Carrying concealed weapon	23	9	3	12				6		3				
Checks, issuing worthless	18	4	2	2				5						
Contempt of court	6	6							6					
Decoying child or kidnaping	3		2	1										
Desertion and non-support	11	1	2	8				1						

CIRCUIT COURT OF JEFFERSON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Defamation	5			5										
Embezzlement	46	5	6	32	3		3	1		1				
Escape	18	5	2	11			5							
False impersonation	1		1											
False pretense	25	4	1	18	2		1	1		1				
Felon harboring	1		1											
Forgery, first degree	146	75	6	63	2		49	21	2	3				
Game law, violating	6	1		5										
Gaming	1			1										
Incest	2		1	1										
Larceny, grand	259	95	40	129	5		34	59	1	1				
Larceny, petit (or attempt)	35	14	6	15				6	2	4				
Larceny from person	21	6	4	10	1		3	3						
Malicious mischief	6	1	1	4						1				
Manslaughter, first degree	12	3	2	5	2			3						
Manslaughter, second degree	7	5	1	1				2		3				
Maintaining a nuisance	1	1								1				
Mayhem	2			2										

Medicine, practicing without certificate	1			1										
Miscegenation	1			1										
Murder, first degree	92	29	34	26	3	4	22	3						
Operating a lottery	1			1										
Perjury	9	2		7			2							
Possessing burglar's instrument	1		1											
Presenting gun	1			1										
Prohibition law, violating	394	147	43	152	19			36	25	83				
Prohibition law, distilling	140	45	24	44	28		3	23		19				
Property, using without permission	1			1										
Public drunkenness	15	7		8						7				
Rape	17	2	9	3	3	1		1						
Resisting officer	4	1	1	2						1				
Revenue law, violating	8	1	1	5	1			1						
Road law, violating	9	1	1	7			1							
Robbery	52	4	28	9	1		4							
School law, violating	1			1										
Seduction	8	1	2	5			1							
Sodomy	8	1								1				
Selling mortgaged property	5	2		4	1		2							
Sending threatening letter	4		1	3										
Stolen property, buying, etc.	12	2	8	3			1		1					
Tick law, violating	11	1	2	8						1				
Trespass	7		1	3	3									

CIRCUIT COURT OF JEFFERSON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Vagrancy	70	17	12	38	3			5	3	3				
Willful injury with dynamite	14	5		6	1		3	1		1				
Totals	2054	664	323	882	94	5	185	249	40	160				

Percentage of convictions, 32.32. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF LAUDERDALE COUNTY.

Abusive language	21	7	1	10	1					5			2	
Adultery	2	1		2						1	1			
Animals, injury to	4	1	1	2						1	1			1
Assault	2			2										
Assault to rape	1	1					1				1			
Assault and battery	5	4		1			1			4	1		4	
Assault to murder	13	6		5			4			2	2		1	

Assault with weapon	13	10	2	1						8	1		8	
Auto law, violating	1	1								1	1			
Bastardy	3	1			2						1			
Bribery	6		1	5										1
Burglary	14	9	1	2			14			1	4		9	
Carnal knowledge	4	1	1	3			1				2			
Carrying concealed weapon	7	4	2	2						3	3		2	1
Disturbing religious worship	17	9	2	5						1			10	
Doing business without license	3	1		2										
Embezzlement	10	2	3	1			1			1			2	2
Escape, aiding prisoner to	1			1										
False pretense	4		3	1			1				1			2
Fraudulent conveyance of property	1	1											1	
Fraudulent checks, giving	1	1								1			1	
Forgery, first degree	9	6	1	2			5			1		1	7	1
Gaming	6	4	1	1						3			3	2
Hunting without permit	1			1										
Larceny, grand	15	4	3	7	1		6			1	3		1	3
Larceny, petit	10	3	2	4	1					2		1	2	1
Malicious mischief	1	1											1	
Manslaughter, second degree	1	1						1					1	
Medicine, practicing without license	11	8	1	3						7	1		7	
Miscegenation	1			1										
Murder, first degree	2			1	1									1
Murder, second degree	5	5					5				4		1	
Perjury	2			2										

CIRCUIT COURT OF LAUDERDALE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Poison, putting out	1			1										
Presenting gun	1			1										
Prohibition law, violating	63	30	13	20				2		28	2	1	28	8
Prohibition law, distilling	55	41	7	8			32	4		3	4		37	7
Prohibition law, possessing still	1	1		1									1	
Public drunkenness	49	28	9	11	1					23			27	6
Quarantine law, violating	1		1											
Rape	1		1											
Resisting officer	2	1		1						1			1	
Road law, violating	3	3								3			3	
School, nuisance to	1	1								1			1	
Seduction	1			1										
Selling mortgaged property	7	2	2	3			1			2			3	2
Shooting on road	1	1								1			1	
Stock law, violating	4	2	1	1						2			1	2

Stolen property, bringing into State	1			1										
Vagrancy	3		1	2										1
Totals	392	202	60	118	7		72	7		108	33	3	166	41

Percentage of convictions, 51.53. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF LAWRENCE COUNTY.

Assault to murder	2	1	1				1				1	1		
Bastardy	1	1						1					1	
Burglary	2	2					2				2			
Forgery	3	3					3				1		2	
Incest	1	1					1						1	
Larceny, grand	2	2					2				2			
Larceny, petit	1	1						1				1		
Manslaughter, first degree	1	1					1						1	
Murder, first degree	8	3	5				3				1	5	2	
Murder, second degree	1	1					1				1			
Prohibition law, violating	1	1								1			1	
Prohibition law, distilling	5	4	1				4						4	1
Totals	28	21	7				18	2		1	8	7	12	1

Percentage of convictions, 75. Predominant crime, Murder, First Degree.

CIRCUIT COURT OF LEE COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Negro.		White.	
											Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Abusive langauge	2	2								2	2			
Assault	1	1								1	1			
Assault and battery	18	15		3				3		12	12		3	
Assault to murder	9	6		2	1		4				5		1	
Assault with weapon	4	4						1		3	4			
Auto law, violating	1		1											1
Bastardy	2		1											
Bigamy	1	1						1			1			
Burglary	20	14	3	2	1		4	4			4	2	4	
Carrying concealed weapon	4	2	1	1						1	2	1	1	
Embezzlement	2	1		1			1				1	1		
Escape or attempt	5	1	4					1					1	1
False pretense	4	4					3	1			2		2	
Forgery, first degree	2				2								2	
Forgery, second degree	2	2					1	1			2			
Gaming	1		1											
Larceny, grand	11	8	1	2			2	4			5	1	3	
Larceny, petit	5	5						1		4	4			

Manslaughter, first degree	5	5					2	1			3		2	
Medicine, practicing without certificate	1		1											1
Miscegenation	1	2					1	1			1		1	
Murder, first degree	1			1										
Murder, second degree	5	4	1				4				3		2	1
Perjury	1	1											1	
Prohibition law, violating	13	7	1	4			4	4			6		1	1
Prohibition law, distilling	21	6	7	8			4				3	4	3	3
Prohibition law, possessing still	13	10	2		1		10				5		5	2
Stolen property, receiving, etc.	5	5					1	3		1	5			
Temporary use of property	1	1						1			1			
Trains, unlawfully riding	1	1	1											1
Totals	162	108	25	24	5		41	27		24	72	9	32	11

Percentage of convictions, 66.66. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF LIMESTONE COUNTY.

Abusive langauge	7	5		2						5	4	2	1	
Adultery	2	2								2			2	
Assault to murder	2	2					2				1		1	
Assault to rob	1	1					1				1			
Assault with weapon	3	3						1		2	2		1	

CIRCUIT COURT OF LIMESTONE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Auto law, violating	1	1								1			1	
Burglary	6	6					6				4		2	
Carrying concealed weapon	5	4		1						4	2		2	1
False pretense	3			3										4
Forgery, first degree	2	1	1				1						1	1
Game law, violating	3		1	2								2		1
Gaming, table keeping	1	1					1						1	
Larceny, grand	8	8					8				4		4	
Larceny, petit	2	1			1			1					1	1
Manslaughter, first degree	6	6					6				4		2	
Manslaughter, second degree	1	1								1	1			
Medicine, practicing without license	1	1								1	1			
Murder, first degree	3	1	2				1				1	2		
Murder, second degree	2	2					2				1			
Prohibition law, violating	6	4	1	1				1		3		1	3	
Prohibition law, distilling or attempt to	42	34	7		1		43			1	27	4	24	4
Prohibition law, possessing still	4	3		1			1	1		1	2		1	1
Road law, violating	2			2										2

Seduction	1			1										1
Selling mortgaged property	3			3										3
Trespass	1	1								1			1	
Totals	118	88	12	14	2		72	4		22	55	11	48	19

Percentage of convictions, 74.57. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF LOWNDES COUNTY.

Assault and battery	3	3								3	3			
Assault with weapon	8	8						2		6	8			
Bail forfeiture	3	3								3	3			
Burglary	10	1	3	3	3			1			1	3		
Carrying concealed weapon	8	7		1						6	6			
Escape	2	1			1			1			1			
Larceny, grand	2	2					2				2			
Larceny, petit	1			1										
Manslaughter, first degree	1	1					1				1			
Murder, first degree	3	1		2			1				1			
Murder, second degree	6	6					6				6			
Prohibition law, violating	12	10		2				3		7	10			
Prohibition law, distilling	24	19		6			17			1	15		2	1

CIRCUIT COURT OF LOWNDES COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Prohibition law, possessing still	1				1									
Selling mortgaged property	2		1	1								1		
Totals	86	62	4	16	5		27	7		26	57	4	2	1

Percentage of convictions, 72.09. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MACON COUNTY.

Animals, injury to	1	1								1	1			
Assault to murder	5	6					5				5			
Assault to rob	1						1				1			
Assault with weapon	3	3								3	3			
Bigamy	1	1					1				1			
Burglary	1	1					1				1			
Carrying concealed weapons	1				1									

Embezzlement	1		1								1			
False pretense	2			2										
Game law, violating	1			1										
Larceny, grand	5	3		2			3				3			
Larceny, petit	2	2						1		1	1		1	
Miscegenation	2			1	1									
Murder, first degree	7	4	2	1		2	2				4	1		1
Murder, second degree	8	7	1				7				7	1		
Prohibition law, violating	3	3						1		2	2			
Prohibition law, distilling	11	6	2	3			6				6			2
Prohibition law, possessing still	7	6	1				6				5	1	1	
Robbery	3	2	1				2				2	1		
Selling mortgaged property	1	1					1				1			
Totals	66	46	8	10	2	2	35	2		7	43	5	2	3

Percentage of convictions, 69.69. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MADISON COUNTY.

Abusive language	8	3	1	4				1		20			20	
Adultery	1			1										
Aiding prisoners to escape	2	2					1							
Animals, injury to	1	1								1			1	

CIRCUIT COURT OF MADISON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault	6	3		3						3				
Assault and battery	9	6		3				3		1			1	
Assault to murder	4	2		2			2						2	
Assault to rape	1	1					1							
Assault to rob	1	1					1						1	
Assault with weapon	18	14	2	2						12	6		5	3
Auto law, violating	51	38	8	12						14	2		7	
Bastardy	1			1										
Burglary	22	18	1	4			18				7		5	
Carrying concealed weapon	55	37	6	12				4		14	6	1	4	
Checks, issuing worthless	2	2								2			2	
Disturbing religious worship	5	4		1						4				
Embezzlement	3	3					2	1			1		1	
Escape		1												
False pretense	2			1										
Forgery, first degree	6	4	2			2	2				1		1	
Game law, violating	3	3									3			
Gaming	25	13	2	8						11			7	2

Incest	1	1					1							
Indecent exposure of person	1	5		3				3						
Larceny, grand	18	12	4	3	1		12				3		2	1
Larceny, petit	13	12		1					10	10	4		4	
License, doing business without	20	5		12	3									
Manslaughter, first degree	3	3					3				1		2	
Murder, first degree	5	5					5				3		2	
Murder, second degree	2	1	1				1						1	1
Operating slot machine	19	19								19			19	
Practicing medicine without license	1	1							1	1			1	
Prohibition law, violating	320	163	23	78	8			18		90	10	3	43	13
Prohibition law, distilling or attempt	46	41	5	5			26			4	7		16	4
Public drunkenness	14	6		8						3			1	2
Resisting officer	5	1		4										
Road law, violating	3	3								3	1		2	
Robbery	2	1	1				1							
Sanitary law, violating	1			1										1
School law, violating	6	1	1	4						1				2
Seduction	1			1										1
Selling mortgaged property	1	1								1	1			
Stolen property, receiving, etc.	9	6		2			2			3			1	
Temporary use of property	4	2			2					2	1		1	
Trespass	1	1								1				

CIRCUIT COURT OF MADISON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Vagrancy	47	9	2	36						8			4	
Malicious mischief	1	1								1			1	
Totals	765	456	59	212	14	2	78	30	11	229	57	4	156	30

Percentage of convictions, 59.6. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MARENGO COUNTY.

Abusive language	1	1								1	1			
Adultery	6	6								6			6	
Assault and battery	18	17	1							18	17	1		
Assault to murder	7	4	3				3	1			4	3		
Assault with weapon	10	7	1	2						4	1		3	1
Burglary	2	2					2			3	5			
Carrying concealed weapon	2			2								1		

Destroying fence	1	1								1	1			
Escape	1				1									
False pretense	2			2										
Forgery, second degree	3	1		2			1				1			
Larceny, grand	3	2	1				2				1	1	1	
Larceny, petit	6	6						1		5	6			
License, doing business without	1			1										
Manslaughter, first degree	2	2					1			1	2			
Manslaughter, second degree	1	1						1			1			
Mayhem	1	1						2		1	3	1		
Murder, first degree	7	1	6				1				1	6		
Murder, second degree	1			1										
Prohibition law, violating	10	4	2	4						4	3	2	1	
Prohibition law, distilling or attempt	10	8		2			3			9	7			
Prohibition law, possessing still	2	1					1				1			
Public drunkenness	4	3		1						3	2		1	
Road law, violating	1			1										
Shooting into dwelling	3	3								3	3			
Sunday law, violating	2			2										1
Temporary use of property	2	2								2	2			
Trespass	2			2								1		
Tick law, violating	5			5										5
Totals	116	73	14	27	1		14	5		61	62	16	12	7

Percentage of convictions, 62.93. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MARION COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Abduction	2			2										
Abusive language	13	4	2	7						4				
Adultery	2		1	1										
Animals, injury to	2	1	1											
Arson, first degree	2	1		1			1							
Assault and battery	3	3		2				1		3				
Assault to murder	4	4					4							
Burglary	11	7	1	3			1		6					
Carrying concealed weapons	9		2	7										
Embezzlement	1			1										
Escape	1	1								1				
Forgery, first degree	1			1										
Larceny, grand	2		1	1										
Larceny, petit	4	4						1		3				
Murder	6	5	1				5							
Perjury	2			2						2				
Prohibition law, distilling	2	2					2							
Prohibition law, violating	43	19	10	15	2		2			16			7	1

Public drunkenness	8	3	1	4						3				
Seduction	4		1	3										
Shooting along public road	1	1								1				
Trespass	2	2								2				
Totals	125	57	21	50	2		15	2	6	35			7	1

Percentage of convictions, 45.60. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MOBILE COUNTY.

Abusive language	32	18	1	6	7			5	5	8	4		14	1
Adultery	2		1		1									
Affray	5	3	1		1				2	1	1		2	1
Abortion	4		1	3										1
Attempt to manufacture liquor	2	2								2			2	
Auto law, Section 35	5	2		1	2			1	1		1		1	
Auto law, Section 21	9	7	1		1			1	1	5	1		6	1
Auto law, Section 10	1	1								1	1			
Auto law, Section 28	22	15	1	1	5			1	1	13	1		14	1
Assault and battery	92	62	4	11	15			17	12	33	22	2	40	2
Assault with weapon	33	26	1	2	4			15	3	8	16		10	1
Assault to murder	32	17	5	4	6		12	5			11	3	6	2
Assault to rape	1			1										

CIRCUIT COURT OF MOBILE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Bastardy	9	3		4	2			2		1	2		1	
Bigamy	5	3			2		2	1			2		1	
Bringing stolen property into State	1		1											1
Burglary	42	32	4		6		24	8			20	3	12	1
Auto, operating without license	6	4		1	1					4	2		2	
Cruelty to animals	1	1						1					1	
Prohibition law, violating	205	111	22	25	47			44	21	46	13	8	98	14
Manufacturing liquor and possessing still	56	36	5	12	3		36				15		21	5
Larceny, grand	78	52	7	8	11		31	20	1		35	3	17	4
Carrying concealed weapons	9	3	1		5				1	2			3	1
Murder, first degree	10	6	2	2		1	5				5	1	1	1
Embezzlement	10	5	2	2	1			2	3		3		2	2
Murder, second degree	7	5		2			5				4		1	
Manslaughter, first degree	7	6	1				5		1		4		2	1
Manslaughter, second degree	2	1	1					1				1	1	
Vagrancy	36	13	20		3				7	6	8	2	5	18
Forgery, second degree	21	12		2	7		11	1			7		5	
Forgery, third degree	3	3						1	2				3	

Larceny, petit	34	22		1	11			10	12		14		8	
Electricity, unlawful use of	1	1								1			1	
Game law	4	3		1						3			3	
Miscegenation	3	3					3				2		1	
Slot machine	5	5								5	1		4	
Crime against nature	2	2					2				1		1	
Passing worthless checks	8	7		1				3		4			7	
Gaming on Sunday	7	2		1	4				1	1			2	
Receiving stolen property	11	6		2	3		4	2			4		2	
Presenting firearms	10	5		3	2					5	1		4	
Public drunkenness	7	7						1	4	2	1		6	
Wanton or malicious obstructing of railroad	2	2					2						2	
Trespass	10	3	3	4					2	1	3			3
Quarantine law, livestock	84	13	4	6	61				12	1	4	1	9	3
False pretense	11	3	1	1	6		1		2		1		2	1
Hunting without license	2		2									1		1
Malicious injury to property	6	4	1	1				1	1	2		1	4	
Robbery	17	8	4	2	3		8				6	1	2	3
Carnal knowledge, girls between 12-16 yrs.	7	2			5		2						2	
Shooting into dwelling house	2	1		1				1					1	
Gaming, public place	4	4								4			4	
Threats	1		1											1
Open store on Sunday	1	1							1				1	
Child welfare law	1	1								1			1	
Section 6397	1				1									
Oyster and shell law	1			1										

CIRCUIT COURT OF MOBILE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Failure to work public roads	2			2										
Removal of property on which there is a lien	3	1			2					1			1	
Permitting gaming	2				2									
Shooting across public road	1			1										
Disturbing religious worship	1			1										
Seduction	1			1										
Practicing medicine without license	3	1		2					1				1	
Pool room law	1	1							1				1	
Practicing dentistry without license	1			1										
Attempting to corruptly influence officer	4	1	2	1			1						1	2
Totals	1009	558	99	122	230	1	154	144	98	161	216	27	342	72

Percentage of convictions, 55.3. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MONROE COUNTY.

Abusive language	3			2	1										
Animals, injury to	2			2											1
Assault and battery	5	2	2	1						2			2		1
Assault to murder	3	1		2			1						1		
Assault to rape	1	1					1				1				
Assault with weapon	12	10	1	1						9	6	1	4		
Bastardy	3	1			2					1			1		
Blue sky law, violating	1				1										
Burglary	4	3	1				3				3	1			
Carnal knowledge	1			1											
Carrying concealed weapon	2	2								2	2				
Labor agent	1		1									1			
False pretense	1			1											
Larceny, grand	4	1		2	1		1				1				
Larceny, petit	6	5		1				1	1	4	6				
Manslaughter, first degree	3	2		1			2				1		1		
Manslaughter, second degree	2	2						2			1		1		
Medicine, practicing without license	3	2		1						2			2		
Murder, first degree	3	1		2			1				1				
Murder, second degree	2	1	1				1						1		1
Prohibition law, violating	25	23		5	1			1		19	9		10		
Prohibition law, distilling	12	4		5	3		4				4				
Prohibition law, possessing still	2			2											

CIRCUIT COURT OF MONROE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Negro.		White.	
											Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Public drunkenness	1			1										
Seduction	1				1									
Selling property under lien	1			1										
Tick law, violating	2	1		1						1			1	
Totals	106	62	6	32	10		14	4	1	40	35	3	24	3

Percentage of convictions, 58.49. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MONTGOMERY COUNTY.

Abusive language	8	7		1						7			7	1
Arson, third degree	1			1										
Assault and battery	40	29		5				13		21	23	5	13	1
Assault to murder	17	9	1	8			7	2			8	3	1	5
Auto law, violating	16	11	3	1						12	4	1	7	3

Bigamy											2	3	2		
Burglary	29	22	4	3			10	8			11	4	7		
Carrying concealed weapon	18	9		5				6		5	10	1	4	1	
Contributing to delinquency	2			2								1		1	
Crime against nature	3	1		1				1			1	1			
Embezzlement	12	5	1	4			3	2			4	4	1	3	
Enticing girl	1			1								1			
Escape	18	17		1			17				5	1	12		
Escape, aiding to	1	1					1						1		
False entry by banking officer	1	1				1							1		
False pretense	12	6	1	7			2	2			6	5	3	3	
Forgery, first degree	8	3		5				2				3	4	3	
Forgery, second degree	3	2	1				2						3	1	
Game law, violating	8			8								1		7	
Gaming	5	2		1						2		3	2		
Hunting without permit	1			1											
Larceny, grand	121	94	9	14			71	23			55	14	39	7	
Larceny, petit	81	72	3	5				12		26	28	1	17	1	
Malicious injury	1	1								1	1				
Manslaughter, first degree	14	12	1	2			9			4	8	1	3		
Manslaughter, second degree	1			1						1				1	
Medicine, practicing without certificate	1	1											1		
Murder, first degree	39	22	9	6		3	19	1			19	11	4	5	
Murder, second degree	3	1					1				1				
Non-support	5	3		2						1	1	3		1	
Presenting gun	1		1									1			

CIRCUIT COURT OF MONTGOMERY COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Prohibition law, violating	108	78	12	14				7		71	27	9	49	7
Prohibition law, distilling	54	27	9	12	3		12	1			12	9	4	4
Property, using without permission	2			2										
Public drunkenness	10	4	2	3						5	2		3	5
Rape	3		2	1								1	1	
Receiving stolen property	10	10			1		1	3		6	7		2	1
Removing stolen property	1		1									1		
Resisting officer	1	1								1	1			
Road law, violating	2	1	1					1			1	1		
Robbery	13	8	2	3			8				3	5	5	
Seduction	1		1											1
Selling mortgaged property	1			1								1		
Selling tainted meat	1	1								1	1			
Mortgaged property, receiving	4		2	2								4		
Sunday law, violating	3			3								3		
Vagrancy	1	1								1			1	
Totals	691	467	66	126	4	4	163	84		175	244	110	205	65

Percentage of convictions, 67.58. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF MORGAN COUNTY.

Assault with weapon	6	6								6	3		3	
Assault to murder	1	1					1						1	
Burglary	14	6	2	6			6				3		3	6
Forgery, first degree	5	3	2				5				2		3	4
Gaming	4	4								4			4	
Larceny, grand	11	10	1				10				6	1	4	
Larceny, petit	7	7						2	6	6	8		1	
Manslaughter	4	4					3		1		2		1	
Murder, first degree	6	3	5				3				2	2	1	3
Murder, second degree	2	2	1				9				2		1	1
Perjury	3		1	2										3
Prohibition law, violating	3	3								3	1		2	
Prohibition law, distilling	17	12	4	1			11			1			12	5
Seduction	1		1											1
Stolen property, receiving, etc.	1	1					1				1			
Totals	85	62	17	9			49	2	7	20	30	3	36	23

Percentage of convictions, 72.94. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF PERRY COUNTY.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	2	2								2	1		1	
Animals, injury to	1			1										
Arson, first degree	2	1		1			1				1			
Assault	1			1										
Assault and battery	8	3		5						3	4	3		
Assault to murder	5	1	4	1			1							
Assault with weapon	3	3						1		3	3			
Bail, forfeiture	2	2								2	2			
Bank bond law, violating	4			4										
Bastardy	1			1										
Burglary	1	1					1				1			
Carnal knowledge	1	1					1				1			
Carrying concealed weapon	28	23	1	4				1		22	20		3	1
Contempt of court	3	3								3	2		1	
Disturbing religious worship	2			2										
Escape	2	1		1				1		1	2			
False pretense	3			3										
Larceny, grand	2	2					2				2			

Larceny, petit	4	2		2						2	2				
Manslaughter, first degree	7	6	2				6			2	5		2		
Perjury	3	2		1			2				2				
Presenting gun	1			1											
Prohibition law, violating	29	12	5	6	6			5		9	8		4	2	
Prohibition law, distilling	16	8	4	2	2		7	1			8	1	1	3	
Prohibition law, possessing still	7	5	2				3			2	4	1	1	1	
Public drunkenness	8	6			2					6			6		
Resisting officer	2	2								2	2				
Road law, violating	11			11											
Selling mortgaged property	3	1		3											
Stock law, violating	1			1											
Sunday law, violating	1	1									1				
Tick law, violating										1					
Trespass	1	1								1	1				
Totals	165	89	18	51	10		24	9		61	72	5	19	7	

Percentage of convictions, 53.93. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF PICKENS COUNTY.

Abandonment	1			1											
Abusive language	9	9								9	3		6		

CIRCUIT COURT OF PICKENS COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Adultery	4	1	1	2						1			1	1
Assault and battery	2	1		1						1	1			
Assault with weapon	1	1								1	1			
Burglary	1			1										
Carrying concealed weapon	7	6			1					6	4		2	
Checks, issuing worthless	2			2										
Disturbing public worship	2	2								2			2	
Disturbing school	1	1								1			1	
Doing business without license	2	2								2			2	
Embezzlement	1	1								1	1			
Larceny, petit	2	2								2	2			
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1								1	1			
Presenting firearms	2		1	1										1
Prohibition law, violating	15	11		1	3			5		1	9	1	6	
Prohibition law, distilling	2	1		1			1				1			
Prohibition law, attempt to distill	4	4								4			4	
Prohibition law, possessing still	5	5					5				1		4	

Property, using without permission	1	1								1	1			
Public drunkenness	12	10		2						10	1		9	
Road law, violating	2	1			1					1			1	
Robbery or attempt	1	1					1				1			
Seduction	1			1										
Selling mortgaged property	3	3								3	1		2	
Shooting across road	1	1								1			1	
Simony	1			1										
Sodomy	1		1									1		
Totals	88	66	3	14	5		8	5		48	29	2	41	2

Percentage of convictions, 75. Predominant crime, Vio'ating Prohibition Law.

CIRCUIT COURT OF PIKE COUNTY.

Abandonment of family	1	1						1					1	
Abusive language	2		1	1										1
Adultery	1			1										
Assault	2	2						1		1	1		1	
Assault and battery	11	8	1	1	1			1		7	4		4	
Assault to murder	4	7			1		4	3			7			
Assault with weapon	1	1								1			1	
Auto law, violating	2	2								2			2	

CIRCUIT COURT OF PIKE COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Burglary	9	8		1			1	7			6		2	
Carnal knowledge	1				1									
Carrying concealed weapon	2			2										
Checks, issuing worthless	1	1								1	1			
Contract written, violating	2	1	1							1		1	1	
Contract labor, violating	1	1								1			1	
Disturbing religious worship	2		1	1										1
False pretense	4	1		3			1						1	
Forgery, second degree	1		1											1
Larceny, grand	6	2	1	1			1	1			2	1		
Larceny, petit	3	1	2							1	1	2		
Manslaughter, first degree	2	2					2				1	1		
Medicine, practicing without certificate	2		2				1						1	2
Murder, first degree	1	1												
Murder, second degree	2	2					2				2			
Prohibition law, violating	24	13	1	8	2			3		10	4		9	1
Prohibition law, distilling	18	18		3			18				7		11	
Timber, unlawful cutting	1		1											1

Public drunkenness	1			1										
Road, law, violating	2	2								2	2			
Seduction	1			1										
Selling mortgaged property	3	2								2			2	
Shooting along public road	2	2								2	2			
Stolen property, buying, receiving, etc.	1	1								1	1			
Sunday law, violating	2	1			1							1		
Unlawful use of property	1	1								1	1			
Totals	119	81	12	24	6		30	17		33	42	6	37	7

Percentage of convictions, 68.06. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF RANDOLPH COUNTY.

Abusive language	7	4		3						4	1		3	
Adultery	1			1										
Arson, first degree	1	1					1						1	
Assault and battery	3	3								2	1		2	
Assault to murder	2	2					2				1		1	
Assault with weapon	9	7	1	1						4	4	1	3	
Auto law, violating	1	1								1			1	
Bastardy	4	1	2	1						1		1	1	1
Burglary	6	1	2	3			1				1	1		1

CIRCUIT COURT OF RANDOLPH COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Carrying concealed weapon	2			1	1									
Defamation	3		1		1									1
Disturbing religious worship	3	2		1						1			2	
False pretense	1	1								1			1	
Forgery, first degree	3			1	2									
Larceny, grand	3	2		1			2						2	
Larceny, petit	3	1	1	1			1				1			1
Malicious mischief	1	1								1			1	
Manslaughter, first degree	2		2											2
Manslaughter, second degree	4	4					3	1			3		1	
Medicine, practicing without certificate	8	4		4						4			4	
Miscegenation	1			1										
Murder, first degree	9	6	2	1			6				6			2
Murder, second degree	1	1					1						1	
Presenting gun	1			1										
Prohibition law, violating	13	6	1	6			5	1			5		1	1
Prohibition law, distilling	15	10	4	1			9			1	4	1	6	3
Prohibition law, possessing still	15	7	1	7			7				4	1	1	

Public drunkenness	1	1								1			1	
Rape	2			2										
Seduction	3		1	2										1
Selling mortgaged property	1			1										
Slander	1	1							1	1			1	
Sodomy	1	1					1						1	
Trespass	2			2										
Unlawful co-habitation	1			1										
Totals	136	68	18	45	4		39	2	1	22	31	5	35	13

Percentage of convictions, 50. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF RUSSELL COUNTY.

Abusive language	1	1								1			1	
Assault and battery	10	9	1					3		6	6		3	1
Assault to murder	6		2	1			3				2	1	1	
Assault to rape	1		1									1		
Bastardy	2	2						2		1	2			
Bribe, attempt to	1		1											1
Burglary	5	5					5				5			
Carnal knowledge	1	1					1				1			
Carrying concealed weapon	4	4						3		1	4			

CIRCUIT COURT OF RUSSELL COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Defamation	1			1										
Embezzlement	2		1	1										1
False pretense	1			1										
Gaming	2		1	1								1		
Gaming, table keeping	1	1					1						1	
Larceny, grand	8	4		4			2				3		1	
Larceny, petit	7	4	1	2				1		3	4	1		
Manslaughter, first degree	1	1					1				1			
Murder, first degree	3	3				2	1				3			
Murder, second degree	9	4	2	3			4				1		3	2
Perjury	3		2	1			2							2
Prohibition law, violating	41	31	5	5				17		14	14		17	5
Prohibition law, distilling	15	8	6	1			8				8	5		1
Prohibition law, possessing still	1	1					1				1			
Public drunkenness	1	1								1			1	
Resisting officer	1		1											1
Road law, violating	3	3								3			3	
Selling property under lien	1		1											1

Slot machine, operating	1	1								1			1	
Stolen property, bringing into State	1			1										
Stolen property, buying, receiving, etc.	3		1	2										1
Trespass	1			1										
Vagrancy	7	4	2							5			5	2
Totals	145	88	28	25		2	29	26		36	55	9	37	18

Percentage of convictions, 60.68. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF ST. CLAIR COUNTY.

Abusive language	7	4		3	1					4			4	
Animals, injury to	1			1										1
Assault and battery	12	4	1	7				1		2	1	1	3	4
Assault to murder	4	1	2	1			1				1			2
Bastardy	1				1									
Burglary	6	1		5			1				1	1		
Carrying concealed weapon	2	1		1				1			1			1
Carnal knowledge	1			1								1		
Disturbing religious worship	21	15	1	5				5		15	2		13	2
Escape or aiding	1			1										
False pretense	1		1									1		
Gaming	10	3		7						2			2	

CIRCUIT COURT OF ST CLAIR COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Larceny, grand	2	2					2				2			
Larceny, petit	5	4		1					4	4		1	4	
Medicine, practicing without license	1			1										
Murder	1		1									1		
Prohibition law, distilling	23	8	2	10	2		10			1	3		8	4
Prohibition law, violating	21	9	7	3	2			2		7	3		8	3
Property, using without permission	4			4										2
Rape	1			1										1
Road law, violating	4	1	3							1			1	
Seduction	2	1		1			1						1	
Selling cigarettes to minors	1	1								1			1	
Selling mortgaged property	1				1									
Tick law, violating	6	2	2	2						2			2	2
Vagrancy	10		4	6								4		3
Totals	149	57	24	61	7		15	9	4	39	15	10	47	25

Percentage of convictions, 38.25. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF SHELBY COUNTY.

Abusive language	13	7		4	2					3			3	2
Animals, cruel killing	2	2								1			1	1
Assault and battery	14	8	1	5						8	2	1	10	1
Assault to murder	9	3		5	1		3				2	1	1	2
Bastardy	1			1										1
Burglary	15	9		3	3		2				1		1	1
Carrying concealed weapon	5	1	1	3									1	4
Embezzlement	3	1		2			1						1	2
Escape, aiding to	1				1									1
False pretense	2			2										1
Gaming	8			8										8
Labor, interfering with	1			1										1
Larceny, petit	13	7		5	1				7	7	1	2	5	4
Manslaughter, first degree	2	2					2				1		1	
Murder	5	8	1	13	1	1	2				3		1	1
Prohibition law, violating	25	9	1	13	1					7	2	1	6	10
Prohibition law, distilling	93	65	6	13	8		12			55	19	3	48	7
Public drunkenness	10	2	1	6	1					2			2	8
Robbery	1				1									
Seduction	1			1										1
Selling mortgaged property	3			3									3	
Slot machine operating	1				1							1		
Stock law, violating	1			1										1

CIRCUIT COURT OF SHELBY COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Trespass	3			3										3
Vagrancy	4			3	1									4
Totals	236	125	12	102	22	1	22		7	84	31	9	85	71

Percentage of convictions, 52.97. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF SUMTER COUNTY.

Abusive language	1			1								1		
Assault and battery	12	9	3					1		8	8	2	1	1
Assault to murder	4	1	2	1			1				1	2	1	
Assault with weapon	5	4						1		3	4			
Burglary	3	3					3				2		1	
Carrying concealed weapon	4	3		1				1		2	3			
Felon, concealing	1			1										

Larceny, grand	5	1	3	1			1				1	3			
Larceny, petit	5	4		1						4	4	1			
Manslaughter, second degree	4	4						2		2	4				
Murder, second degree	1	1					1				1				
Prohibition law, violating	25	18	3	5				1		16	17	6			
Prohibition law, distilling	2	1	1				1				2				
Prohibition law, attempt to distill	7	7								7	7				
Prohibition law, possessing still	9	8					8				8	1			
Public drunkenness	9	9								9	2		7		
Seduction	1			1											
Trespass	1	1								1	1				
Totals	99	74	12	12			15	6		52	65	16	10		1

Percentage of convictions, 74.74. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF TALLADEGA COUNTY

Arson, second degree	1		1												1
Assault	3	3								2	2		1		
Assault to murder	7	4	3				1	2			1		3		3
Assault with weapon	10	9						1		5	4		4		
Bastardy	2	1		1							1				
Bigamy	1	1											1		

CIRCUIT COURT OF TALLADEGA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Burglary	5	5					5				2		2	
Carnal knowledge	2			2										
Carrying concealed weapon	2			2										
Disturbing public worship	1	1											1	
False pretense	4	3		1			1				3			
Larceny, grand	8	7	1				2				5		2	1
Larceny, petit	4	4								1	1		3	
Manslaughter, first degree	2	2					1				2			
Murder, first degree	4	4				1	3				1		1	
Murder, second degree	3	2		1			2				2			
Presenting gun	2	1	1							1				1
Prohibition law, violating	12	10		2				1		9	4		5	
Prohibition law, distilling	33	23	4	5			15				5	1	15	2
Prohibition law, attempt to distill	1	1								1			1	
Public drunkenness	2	2											2	
Resisting officer	1	1								1	1			
Selling mortgaged property	3	1		2				1					1	
Stock law, violating	1	1								1	1			

Sunday law, violating	4	4								4			4	
Trespass	1		1					1			1			1
Vagrancy	1	1						1			1			
Totals	120	81	11	16		1	30	7		25	37	1	46	9

Percentage of convictions, 67.5. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF TALLAPOOSA COUNTY.

Abusive language	1	1						1		1	1			
Adultery	2	2								2	2			
Affray	1	1								1	1			
Animals, injury to	1	1								1		1		
Assault	2	1	1					1					1	1
Assault to murder	5		2	2	1									2
Assault to rape	2	2					2				1		1	
Assault with weapon	3	3								3	1		2	
Auto law, violating	1	1								1	1			
Bigamy	1	1					1						1	
Burglary	7	8					8				3		5	
Carrying concealed weapons	3	3						1		2	1		2	
False pretense	2			2										
Forgery, first degree	1			1										

CIRCUIT COURT OF TALLAPOOSA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Forgery, second degree	1	1					1				1			
Gaming	2	1	1							1			1	1
Larceny, grand	6		1	4	1							1		
Larceny, petit	1			1										
Manslaughter, first degree	3	3					1				1			
Medicine, practicing without license	1				1									
Murder, first degree	4	1		3			1				1			
Murder, second degree	3	3					3				1		2	
Prohibition law, violating	12	8	2	2				3		2	3		5	2
Prohibition law, distilling	17	6	4	6	1		6				1	1	5	3
Prohibition law, possessing still	2	2					2				2			
Seduction	1		1										1	
Selling mortgaged property	3			3										
Stolen property, buying, etc.	1	1					1						1	
Totals	90	51	12	24	4		27	6		14	21	3	28	9

Percentage of convictions, 56.66. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF TUSCALOOSA COUNTY.

Abusive language	10	4	2	4									4	
Adultery	3	3						2		1	2		1	
Animals, injury to	2	1		1									1	
Arson, first degree	2		1	1										
Assault and battery	35	23	3	7	2			4		4	9		14	1
Assault to murder	8	6		2			4	2			6			
Assault to rape	2	2					2						2	
Assault with weapon	3	3								3			3	
Auto law, violating	3	1	1	1						1			1	
Burglary	20	9	4	7			6	3			5		4	
Carnal knowledge	2	1	1					1					1	
Carrying concealed weapon	5	3	1	1				1			1		2	
Checks, issuing worthless	20	13		7				2			3		10	
Embezzlement	1	1					1						1	
False pretense	8	4		4					2	2	1		3	
Felony, attempt to commit	16	12	2	2				2	1	2	1	1	3	1
Forgery, first degree	11	8					4	2			7		9	
Game law, violating	1		1											
Insurance law, violating	4	1		3									1	
Labor agent, without license	2		2											1
Larceny, grand	10	9		1			4	5			4		5	
Larceny, petit	47	30	3	14				13	5	3	12	1	17	1
Malicious mischief	9	3		6				3						

CIRCUIT COURT OF TUSCALOOSA COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Manslaughter, first degree	5	5					3		1		3		2	
Medicine, practicing without certificate	1		1											
Murder	8	5	2		1		5				2		3	1
Presenting gun	1	1								1			1	
Prohibition law, distilling	43	23	6	13			15	7		8	6		18	
Prohibition law, violating	28	28	4	4	2			11		4	7		21	2
Public drunkenness	25	14	4	6				3		3	3		10	2
Quarantine law, violating	10	3	1	6						2			3	
Robbery	1						1				1			
Seduction	2			1									1	
Selling mortgaged property	3			2	1									
Sodomy	1		1											
Stolen property, buying, etc.	3	2		1			2				2			
Vagrancy	9	4		4	1			1		1	3		1	
Totals	364	222	40	98	7		48	61	9	35	78	2	142	9

Percentage of convictions, 60.98. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF WALKER COUNTY.

Abusive language	15	10		5						6			10	5
Adultery	1			1										1
Arson	2			2										1
Assault and battery	44	29	6	11						29	5	3	24	12
Assault to murder	15	1	2	12			1				1		1	6
Auto law, violating	1	1								1	1			
Bastardy	1	1											1	
Bigamy	1		1											1
Bribery	1			1										1
Burglary	10	4		6			4				4			6
Carnal knowledge	1		1											1
Carrying concealed weapon	16	5	2	9						5			6	10
Checks, issuing worthless	1			1										1
Desertion	3	2	1					1		2			2	1
Defamation	1	1								1			1	
Disturbing religious worship	13	5	2	6						5			5	7
Embezzlement	6	1		5						1			1	5
False pretense	2		2											2
Forgery, first degree	6	1	1	4					1				1	5
Game law, violating	2	2								2			2	
Gaming, table keeping	2	1		1						1			1	1
Larceny, grand	38	17	5	16			17			6	10	4	10	9
Larceny, petit	15	11	2	1					1	11	4	1	3	2

CIRCUIT COURT OF WALKER COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Manslaughter, first degree	2	2					2			2	2			
Murder, first degree	19	7	6	6			7				3	2	4	5
Murder, second degree	5	3		2			3			1			3	2
Perjury	1			1										1
Presenting gun	1	1								1			1	
Prohibition law, violating	68	26	14	28					2	26	3	12	23	30
Prohibition law, distilling	56	22	8	26			10			22			22	34
Public drunkenness	6	4		2						4			4	2
Road law, violating	2		1	1										2
Robbery	1		1											1
Seduction	4			4									1	3
Sunday law, violating	6	1		5						1			1	5
Traffic law, violating	1	1								1			1	
Trespass	1	1		1									1	
Vagrancy	2	1		1						1	1			1
Totals	372	161	55	158			44	1	4	129	34	22	129	163

Percentage of convictions, 43.27. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF WASHINGTON COUNTY.

Abusive language	7	5		2						5	1		4	2
Animals, injury to	3		1	2										3
Assault and battery	12	12								12	1		11	
Assault to murder	4	1	2	1			1				1			3
Assault with weapon	3	3								3	1		2	
Burglary	2	1			1		1				1			
Carrying concealed weapon	6			6							1	1	2	1
Changing mark on hogs	1			1										1
Game law, violating	1	1								1	1			
Larceny, petit	18	15	4	11					15	15			15	15
Manslaughter, first degree	1	1					1						1	
Manslaughter, second degree	1	1							1	1	1			
Medicine, practicing without certificate	1			1										1
Miscegenation	3	1	1	1			1				1	1		1
Murder, first degree	1		1									1		
Murder, second degree	1	1					1						1	
Perjury	2				2									2
Prohibition law, violating	21	11	3	4	3					11	3	2	8	5
Prohibition law, distilling	6	4		2			1			2	1		3	1
Property, injury to	1				1									1
Public drunkenness	5	5								5			5	
Resisting officer	1			1										
Road law, violating	4	2			2					1	1			2

CIRCUIT COURT OF WASHINGTON COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Selling mortgaged property	1		1									1		
Slot machine, operating	3	3								3			3	
Sunday law, violating	1	1								1			1	
Auto law, violating	1		1											1
Totals	111	68	14	32	9		6		16	60	14	6	56	40

Percentage of convictions, 61.26. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF WILCOX COUNTY.

Abusive language	5	3		1	2					3	2		1	
Animals, injury to	2	2								2	2			
Arson, second degree	2	2					2				2			
Assault, simple	1			1										
Assault and battery	7	6		2						5	4		1	

Assault to murder	5		3	1	1							2		1
Assault with weapon	15	13						8		11	13			
Auto law, violating	1	1								1		1		
Bastardy	1			1										
Burglary	2	1			1		1				1			
Carrying concealed weapon	19	8		6	2			4		7	10	2	1	
Embezzlement	1			1										
False pretense	3			3										1
Forgery, first degree	1	1						1			1			
Larceny, grand	7	5		2				5			5			
Larceny, petit	8	6		2			1	1	3	6	6			
Manslaughter, first degree	2	1			1		1				1			
Manslaughter, second degree	4	4						4		3	4			
Medicine, practicing without certificate	1			1										
Murder, first degree	6	2	2	2			3				3	2	2	
Murder, second degree	5	4		1			4				4			
Prohibition law, violating	16	7			4			6		4	7	2		
Prohibition law, distilling	33	22	3	4	1		16	7		1	22	3		
Prohibition law, possessing still	6	6					2	3		4	6			
Public drunkenness	1	1								1			1	
Rape, assault to	2		2					1				2		
Road law, violating	3	2	1							2	1	1	1	
Seduction	2			2										1
Shooting across public road	1	1								1			1	

CIRCUIT COURT OF WILCOX COUNTY—Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Stock law, violating	2	1		1						1			1	
Vagrancy	1			1										
Totals	165	99	11	32	12		30	40	3	52	94	15	9	3

Percentage of convictions, 60. Predominant crime, Violating Prohibition Law.

CIRCUIT COURT OF WINSTON COUNTY.

Abusive language	24	11	3	13	1					11			1	1
Adultery	7		1	1	1									
Assault and battery	12	2	1	9						2				
Assault to murder	13	3	1	5	4		1			2				
Assault to rape	1			1										
Burglary	10	3	1	6			3						1	1

Carrying concealed weapon	6	2	2	2						2			1	1
Defamation	1			1										
Disturbing religious worship	5	5								5				
Embezzlement	10		2	8										
False pretense	6		1	3	2									
Forgery, attempt at	6	3	1	2			1		2	2			1	
Gaming	8	4		4						4				
Larceny, grand	3			2										
Manslaughter, first degree	1	1						1						
Murder, first degree	1	1					1							
Perjury	1				1									
Prohibition law, violating	33	12	5	15				1		11			3	1
Prohibition law, distilling	106	34	5	39	1		14			18			11	
Property, injury to	5	3	2							2			2	1
Property, using without permission	2	2								2				
Public drunkenness	38	15	4	17	2					15			4	
Resisting officer	2			2										
Road law, violating	5	2		3						2				
Selling mortgaged property	2			2										
Totals	308	103	29	135	12		20	2	2	78			24	5

Percentage of convictions, 33.44. Predominant crime, Violating Prohibition Law.

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